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ABSTRACT

The primary focus of this legal education module, third of five to be integrated into an 11th grade American history course, is on the relationship of social change and legal change. Students are asked to create a model for evaluating change processes, then to evaluate legal and extra-legal methods of influencing change. The module provides for the analysis of change methods from the use of the vote, the role of the lobby, and the place of protest to the function of revolution. Much of the material under the civil rights topic is used as a case study for examining the change process. The format of this module follows that described for Module I, SO 007 673. (Author/KSM)

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TEACHING ABOUT BASIC LEGAL CONCEPTS IN THE SENIOR HIGH SCHOOL

MODULE III-THE SYSTEM: LAW AND CHANGES

SO 007 671

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MODULE III-THE SYSTEM: LAW AND CHANGES

1. *The Main Point.*

The primary focus of this module is the relationship of social change and legal change. The needs of society change with time. Thus, laws must be able to change if laws are to meet society's changing needs. The following questions about change are considered in this module: (1) What are the various reasons why laws must change? (2) Through what processes may law change? (3) What processes may individuals use to influence legal change? (4) What basic kinds of changes in laws and the legal system might be made? (5) What obstacles are there to social progress through legal change?

2. *Why This Point?*

Today, many people want to change American society. In order to make effective change, they need to understand law and its relationship to social change. By looking at law's role in social change, students may develop an appreciation for the complexity of problems of social change. Answers and solutions are seldom simple. Change is needed in our society. But all change is not good change. By learning something about the processes of change, students may be able to encourage good change, and prevent bad change.

Some of the most immediately needed changes in our society are changes in the processes by which just and orderly legal change is implemented. Usually in a democracy, such changes in the legal system itself can be made only when the people become concerned with the change processes themselves. While legal change is natural, there is little assurance it will be achieved in orderly and just ways without informed citizen effort.

Although the examples given here emphasize contemporary topics, historical perspective is needed also, to see the law as process. Some students will enjoy reading biographies of Justice Oliver Wendell Holmes to get this perspective. References are included in the general bibliography for the project.

3. *Outline of the Teaching Scheme.*

This module on social change and legal change treats nine understandings:

- Why some laws must inevitably change
- Criteria for evaluating processes for influencing legal change
- Legal means of influencing legal change
- Extralegal means of influencing legal change
- Contrasting methods of influencing legal change
- Sources of legal change
- Types of possible legal change
- Evaluating legal change.
- Obstacles to change through the system

SUMMARY OF UNDERSTANDINGS

I. AS SOCIAL CHANGE OCCURS IN MOST SOCIETIES, LAWS MUST CHANGE TO RESPOND TO CHANGING SOCIAL NEEDS.

II. THE PROCESSES FOR INFLUENCING CHANGE IN LAW CAN BE EVALUATED IN TERMS OF THE VALUE OF THE PROCESS USED TO MAKE CHANGE AS WELL AS IN TERMS OF POTENTIAL OUTCOME.

III. METHODS OF INFLUENCING CHANGE IN THE LAW INCLUDE BOTH LEGAL PROCESSES AND EXTRALEGAL MEANS, AND RANGE FROM FREE EXPRESSION TO VIOLENT REVOLUTION.

IV. IN OUR LEGAL SYSTEM, CHANGE MAY BE MADE BY ADMINISTRATIVE ACTION, BY LEGISLATIVE ENACTMENT, OR BY JUDICIAL DECISION.

V. CHANGE IN OUR LEGAL SYSTEM CAN BE CLASSIFIED INTO SEVERAL DIFFERENT BASIC TYPES.

VI. BECAUSE ALL CHANGE IN LAW IS NOT NECESSARILY SOUND CHANGE, CERTAIN PROCESSES EXIST TO SCREEN CHANGE IN OUR LEGAL SYSTEM.

VII. SEVERAL OBSTACLES MAY HINDER CHANGE THROUGH OUR LEGAL SYSTEM.

UNDERSTANDING I

AS SOCIAL CHANGE OCCURS IN MOST SOCIETIES, LAWS MUST CHANGE TO RESPOND TO CHANGING SOCIAL NEEDS.

A. *Explanation of Understanding I*

Laws exist primarily to meet the needs of societies for controls. Yet most societies are dynamic rather than static. As societies change, so do the needs for social controls. Thus, a legal system that meets the needs for which it exists is a system than can change.

Three broad categories of social change that might lead to needs for legal change are listed below. Any one of these examples of social change could be used to illustrate the understanding.

. The growing accumulation of knowledge and technological advances:
  - organ transplants

- life support systems that can keep a "dead" body alive
- space exploration
- exploration of ocean depths and use of floating arctic "ice islands"
- development of atomic energy
- industrialization
- growing education of the labor force

. Growth and movement of population:
- population explosion
- migration of blacks from the South to northern cities
- middle class migration from urban centers to suburbs

. Changing social values:
- growing concern with women's rights ("women's lib")
- growing concern over racial injustices
- growing concern over the rights of homosexuals ("gay lib")
- increased use by young and old of "soft drugs"
- reevaluation of the morality of abortion
- changing attitudes toward sexual practices

B. *Teaching Understanding I*

OBJECTIVES

. The student can demonstrate understanding of the need for change as a function of a legal system by identifying several situations about his own life differing from that of his grandparents at the same age, and by listing the changes in law or rules needed to accommodate that difference.

. The student will demonstrate awareness of the fact that a good legal system must change to meet the needs by preparing a statement concerning why a recent change made in a local ordinance or a school rule was necessary.

QUESTIONS TO REACH UNDERSTANDING

. Why might our society be considered to be in a state of rapid social change?

. Why does social change result in need for legal change?

. Justice Holmes said, "Law is what the most powerful (group) say that it is." How does this statement show the relationship of legal change to social change?

DETAILED DESCRIPTION OF STRATEGIES

(a) As an introductory strategy, the teacher may wish to assist students in developing an understanding of the nature of social change by using a school-based example. Students may interview grandparents, parents, and alumni of classes who graduated 10 to 15 years earlier in regard to what is different about school regulations concerning student behavior and student performance. These differences can be analyzed regarding changes in society at large: How is the world different now than it was years ago? Why must these changes come?

The teacher and students may collect news articles from recent periodicals which will serve as illustrative examples of contemporary social change. All the articles may relate to a single area of change. Reproduced excerpts from these articles may be used as student readings to initiate the consideration of social change. Students should be asked to identify the change(s) indicated by the readings and to speculate as to the cause(s).

Key questions to be used in stimulating discussion in conjunction with articles might include the following:

- Does the social change reflected in the article lead to a need for legal change?

DISCUSSION OF STRATEGIES AND RESOURCES

This first understanding reveals why change in most legal systems is socially necessary, natural, and inevitable. To reach this understanding students should take a structured look at contemporary social changes of interest and see how social change of various sorts makes legal change both natural and necessary in society. Detailed analysis of particular legal changes is postponed to subsequent understandings.

With regard to the first strategy, in some schools, a specific example such as smoking rules or lunch hour rules can be used as a case for this introduction to change.

Although laws exist primarily to meet felt needs of society for controls, societies are constantly changing. New scientific knowledge leads to technological advances that change the character of life. Populations increase, decrease, and shift, adding to the dynamic nature of social life. Social values change with time. Many contemporary issues of interest to young people (pollution, the movement against the war in Vietnam, the drug scene, racial discrimination, the 18-year old vote, women's liberation, the ghetto) reflect social changes of the kinds mentioned above.

After gathering current literature relating to social changes, students should focus on the reasons for such changes. Students can then discuss what new needs for law are presented by the social changes that have been selected for study. For example, in the case of the development of the capacity to transplant organs, the following questions might stimulate

DETAILED DESCRIPTION OF STRATEGIES

- What new needs for law are presented by this situation?

(b) Have the class think of examples of social change that in the judgment of the students have led to the need for legal change. List suggestions on the board. Assist the students in relating similar ideas and in developing several general categories. Suggestions which are themselves broad categories may need to be broken down into component parts.

(c) The Fall Out Shelter Game (see Resources, p. 63) and *Pollution Control* by J. A. Eisenberg, in Dilemma 1 (see p. 53) both offer the students opportunity to analyze the need for legal change created by social change.

(d) Have each student select one social change in which he is interested and that he believes has led to a vital need for legal change. For example, much is being written about genetic engineering, which has important implications for society in the future.

As part of this activity, the student should be assigned to gather information from the mass media and obtain relevant clippings from newspapers and magazines.

DISCUSSION OF STRATEGIES AND RESOURCES

thought about how law might be used to deal with new problems resulting from social change. (a) Who can donate organs for transplants? (b) If demand for organs outnumbers supply, who gets what is available? (c) How "dead" must a person be before doctors begin removing pieces of him for transplants?

If the selection is carefully done, the problem resulting from the need for legal change could serve as a student project throughout the entire module. Selecting a social change in which he is interested might better serve to focus the student's attention on the basic concepts to be learned as he applies those concepts to his own particular example of the need for legal change.

An example of periodical coverage of topics concerning social change is "Who's Asking Life and Death Question Today?" in Saturday Review/World, September 25, 1973.

UNDERSTANDING II

THE PROCESSES FOR INFLUENCING CHANGE IN LAW CAN BE EVALUATED IN TERMS OF THE VALUE OF THE PROCESS USED TO MAKE CHANGE AS WELL AS IN TERMS OF POTENTIAL OUTCOME.

A. *Explanation of Understanding II*

In this understanding, the various procedures by which citizens may influence change in law are evaluated. It has been said that ours is a result-oriented society. We tend to judge things in terms of ultimate outcomes. Yet, it also may be observed that injustice is as likely to result from the way something is done as it is from the outcome. Thus, Understanding II focuses on evaluation of processes for influencing legal change.

B. *Teaching Understanding II*

OBJECTIVES

- The student can list three different circumstances under which the end would not justify the means in the change of a rule or law.
- Given a description of a program to change an existing legal situation such as the length of the school year, the student can list criteria to apply in evaluating the change process and can give examples of acceptable steps in bringing about the change.

QUESTION TO REACH UNDERSTANDING

- What criteria can be used in evaluating the process of change?

DETAILED DESCRIPTION OF STRATEGIES

(a) The basic procedure for the initial strategy consists of consideration by students of a single case study concerning a demand for legal change. Ask students, in small groups, or the class as a whole to consider this problem: How can a change in the school smoking rule be effected? Have them suggest as many possibilities for bringing about the desired change as they can. Do not discourage the more outrageous suggestions.

After a number of suggestions have been made, the teacher can ask students to compare, contrast, and begin to group their suggestions for bringing about a change in the school smoking rule under such categories "legal," "peaceful illegal," "violent illegal," or "revolutionary."

Categorization may stimulate additional responses.

An outline of possibilities might include the following:

a) "Legal" demand for change.
Several students make peaceful speeches during lunch hour and after school about the hypocracy of the smoking rules.

Forty percent of the student body signs a petition directed to the principal and Board of Education objecting to the smoking rules.

DISCUSSION OF STRATEGIES AND RESOURCES

In the operation of law, the outcome is not the only thing that is important. The ways or processes by which law reaches outcomes are also subject to evaluation; these processes may be good or bad, just or unjust. When one evaluates the operation of law, often one focuses on the legal outcome or result. For example, one might judge legal change that improves protection of civil rights or the environment as desirable and believe that legal change that works against civil rights or environmental protection as undesirable.

The results of efforts to change law are very important, but so are the processes by which law undergoes change. There may very well be a critical connection between the processes followed and the chances of reaching a desired result. Even if the resulting change is good, something is objectionable if the change occurred as a response to violence such as an assasin's threats.

There are general criteria that are characteristic of most sound legal processes. Examples of these criteria might be:

(a) opportunity for those most directly affected to have some voice

(b) provision for rational deliberation of relevant facts

(c) consistency of process (are like cases treated in the same way?)

(d) openness of process

(e) avoidance of violence

DETAILED DESCRIPTION OF STRATEGIES

b) Peaceful "illegal" demand for change. Several students smoke cigarettes in the cafeteria and submit to disciplinary proceedings when they are noticed.

Several students come to school, but refuse to attend classes until the smoking rule is changed.

c) Violent "illegal" demand for change. Students kidnap a teacher and agree to release him only in exchange for the change they desire and amnesty for the kidnapping.

A few students make bomb threats each day until the school officials agree to meet their demands for change.

Several students occupy the principal's office and agree to get out only if they are not disciplined and the change they desire is made.

d) Revolutionary demand for change. Students march on Board of Education meeting and take over, replacing board members with members favorable to students seeking demands.

DISCUSSION OF STRATEGIES AND RESOURCES

In evaluating processes for influencing legal change, students might first identify criteria that would be characteristic of sound legal change process, thus noting what might be qualities of a model process for influencing legal change. The strategies include evaluation of various methods of trying to bring about legal change by looking at an example of change in school rules. By examining these ways of influencing change against characteristics of a model process for making legal change, students may see that the closer one moves toward violent coercion the more objectionable the procedures for changing law become. Ideas of democratic decision making are ignored. The opportunity to reason is minimized. Threats of physical harm to people and property are presented. People may see violence as a legitimized way to get things done and lose respect for orderly operation of law. In evaluating the change process, one might ask: (a) Are those most closely affected by the change given a representative voice in what the change will be? (b) Does the change process provide for investigation and time for rational deliberation? (c) Is the change process orderly and unlikely to result in physical injury to people or property? (d) Does the change process encourage respect for the rule of law?

DETAILED DESCRIPTION OF STRATEGIES

DISCUSSION OF STRATEGIES AND RESOURCES

Have the entire class or teams of students determine which of the various approaches would be the most desirable course of action to follow. Analysis of the reasoning which resulted in the decision will provide a transition to a consideration of criteria for use in evaluating change processes.

(b) Among the strategies for the previous understanding, it was suggested that each student select a change in which he was interested and which he believes requires legal change. The students will be gathering clippings from local newspapers and relevant information from other periodicals. As part of his individual project the student should suggest as many methods as he can for bringing about change in the problem he has selected.

(c) Divide the class into several groups. Charge each group with developing a set of criteria for evaluating change processes. Students may express their ideas as statements or as questions to be asked when examining a change process. Move to a fishbowl format to consolidate the ideas of the various groups. The role of the teacher may depend on the ability of the students and the degree to which they are successful on their own.

DETAILED DESCRIPTION OF STRATEGIES

DISCUSSION OF STRATEGIES AND RESOURCES

Some questions to stimulate thinking might include these:

- Are some change processes fundamentally wrong?
- Are some change processes more sound than others?
- What are the characteristics of a sound change process?

Once these criteria are developed, they can be used to build a model for evaluating the process of making change. The model developed might approximate the following:

- Provision for those subject to the new rule to have some voice (at least representative voice) in what the change will be
- Provision for adequate time for rational deliberation and investigation of the facts before making change
- Use of established, legitimate procedures for making change
- Openness of the procedure for making change
- Little possibility of physical harm to the person or property of others in the process of making change

The model developed above can be used for the following purposes:

1) To evaluate the various methods for bringing about change suggested in class

DETAILED DESCRIPTION OF STRATEGIES

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2) To evaluate the suggestions for change which individual students have come up with in their projects

3) To continue evaluating change processes as Understandings III and IV are developed

Interested students may make a large wall poster of the model for evaluating change processes. Students may also make a spirit master of the model and produce copies for everyone.

Have students view a film such as "Changing the Law," A Bernard Wilets Film, 23 minutes. This film provides experience in evaluating processes for influencing legal change.

As an optional exercise teacher and students may want to develop a model for evaluating the result of the change process. Such a development might constitute a class exercise led by the teacher or it might be a project for small numbers of students or an individual.

UNDERSTANDING III

METHODS OF INFLUENCING CHANGE IN THE LAW INCLUDE BOTH LEGAL PROCESSES AND EXTRALEGAL MEANS, AND RANGE FROM FREE EXPRESSION TO VIOLENT REVOLUTION.

A. *Explanation of Understanding III*

If laws are to change to meet changing social needs, a stable legal system must have some provision for identifying desire for legal change. As societies become increasingly complex, the influence of each individual on the legal system becomes less pronounced. The legal processes for influencing change examined are:

- free expression by the individual citizen
- free expression by organized groups
- the vote

Extralegal attempts to influence can take many forms. One way to express a concern that the law needs changing is to disobey it.

Since methods of influencing change form a continuum ranging from legal free expression through classic civil disobedience through violent protest to revolution, it is frequently difficult to decide when pressure for change ceases to be legal, when it ceases to be peaceful, or when it becomes revolutionary. The continuum might include the following measurement positions:

Legal Expression	Peaceful Civil Disobedience	Violent Protest	Revolution

Students should be encouraged to consider the difficulty of distinguishing between socially productive and unproductive protest, between legal and illegal protest, between peaceful and violent protest, and between violent protest and revolution. Here again, evaluation of processes for influencing change is relevant.

Module 3

B. *Teaching Understanding III*

OBJECTIVES

- Given a description of a situation involving social change, the student can suggest several legal and several extralegal ways in which the change came about, and can rank order these means in terms of greatest benefit to society.
- The student can compare legal and extralegal means of change in terms of efficiency, effectiveness, and the general welfare.
- Based on a comparison of legal and extralegal means of change, the student can develop a statement concerning advisability of using legal vs. extralegal means of bringing change.

QUESTIONS TO REACH UNDERSTANDING

- How are legal processes used to influence change?
- What does evaluation in terms of the model process for change reveal about the different legal means used to influence change?
- How are extralegal processes used to influence change?
- What are the consequences to the individual and to the society when one breaks a law as a matter of conscience, that is, a law he believes is wrong?
- What does evaluation in terms of the model process for change reveal about the different extra-legal means used to influence change?
- How does the fact that change processes form a continuum affect our definition of those processes?
- How does the fact that change processes form a continuum affect our evaluation of those processes?

Module 3

DETAILED DESCRIPTION OF STRATEGIES

Student Projects

Have students who are developing ongoing individual projects throughout the course of this Module consider what methods of influencing change might be efficacious in bringing about change in the problem selected for study.

Class Activities

Each of the numbered sets of activities is related to developing student awareness of the legal process described in the statement preceding it.

1. Protection of free expression provides a process by which individual citizens may influence change.

   (1a) Have the class read the first amendment to the United States Constitution. Have students answer these questions: What is the connection between the first amendment and legal processes by which changing the law can be influenced? What is the role of free expression in the legal change process?

   (1b) Assign students to locate coverage in the *New York Times* or other newspapers of the exercise of free expression by a citizen or group of citizens in an attempt to influence a change in the law.

   (1c) Have individual students formulate a change in law that each would like to see

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Laws must change to meet changing social needs. Therefore, in a stable legal system there will need to be some specific processes by which lawmakers can be kept sensitive to the changing needs of the people—some legitimate ways by which the people can let legal officials know they want change.

1. Protection of individual free expression. Perhaps the most important civil liberty is the right to express oneself freely, the right of the governed to criticize the government. As a prerequisite for government being responsive to the wants and needs of the people, people must be free to voice these wants, even if they are inconsistent with the status quo of the majority position of the moment. Protection of free expression means protection of the right to dissent, of the right to take unpopular stands without punishment, of the right to advocate change.

Legislative representatives and their staffs read their mail and generally answer it. Of course, the expression of a view to a representative is no assurance that it will be heeded. However, representatives are aware that the kinds of citizens who take the trouble to write are the same kinds who will follow a legislator's voting record and use this information at election time.

2. Protection of free expression by groups. Another important process by which legal change is influenced is through the organized interest group. Special interest groups often spend money on professional lobbyists who gather information about possible legislation and present this information to

DETAILED DESCRIPTION OF STRATEGIES

occur and write a letter to a representative or senator in Washington and an assemblyman or senator in Albany. Ideally, this letter should relate to the continuing individual project on which each student is working.

(1d) Have teams of students review bodies of literature, current or historic, which used free expression to encourage legal change. The literature of the Muckraker Era is one example; the Ralph Nader Study Group Reports constitute another example. A review of political cartooning, especially the work of Thomas Nast will contribute to an understanding of another dimension of the use of free expression by an individual to induce legal change. The case study of Thomas Nast in *American Civilization in Historic Perspective, Part I*, published by this Department, can be used.

2. Protection of free expression provides a process by which organized private interest groups can influence change.

(2a) Arrange for a representative of a local interest group to visit the class and to speak on the role and process of the lobby in Albany and/or in Washington. Examples of local interest groups which might provide a speaker include the following:

- Local industry
- Local chapter of National Rifle Association

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legislators for the purpose of showing why particular legislation should or should not be passed. On any particular issue concerning legal change, several lobbies may be at work trying to influence legislators. For example, on the issue of legal change for air pollution control, lobbyists representing interest groups such as auto manufacturers, the oil industry, and conservation groups are at work trying to inform and influence legislators.

3. Right to vote. An obvious process by which citizens can affect change is by sending representatives to government who agree with them as to the need for change. By keeping abreast of candidates' positions on proposed changes and voting accordingly, the citizen has an opportunity to influence change.

Of course, in national and state elections, the individual voter's influence is invisibly small. Nevertheless, some trends are discernable: as Americans awakened to an ecological crisis in the 1960's, "environmental candidates" have met with success; as voters have turned against the Southeast Asia war in the late 1960's, peace candidates have fared well in the 1968 and 1970 elections.

The vote may be a particularly appropriate change process for focus as voting rights are being extended to 18-year-olds. Many high school juniors and seniors are eligible to register to vote. This might be a good time to do so.

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- Local chapter of the American Automobile Association
- Local chapter of the National Association for the Advancement of Colored People
- Local chapter of the Environmental Defense Fund or the Sierra Club
- Local teachers' union or association

Followup discussion should include an attempt to evaluate the role of the private interest group in the legal change process.

(2b) Have students read and discuss the Federal statute that provides for regulation of the lobbying process. (See resource section for this understanding.) Students should answer these questions:

- Why is the process of influence by a lobby important to change?
- Why is it necessary to regulate lobbies?

3. <u>The right to vote provides a process by which citizens can influence change</u>.

(3a) Have students examine and discuss a Federal law having an impact on the right to vote. (See resource section for new Federal law extending the vote to 18-year-olds.) Students might attempt to answer these questions:

- How does this law affect the change process?
- How is the change brought about by this law a part of the change process?

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(3b) Have the class read and discuss the 26th amendment to the U.S. Constitution. In conjunction with this activity and also the following activities which deal with the 18-year-old voter, have students discuss these questions:

- How does the voting age affect the change process?
- How is the new lower voting age a part of the change process?

(3c) Students can organize and implement a voter awareness and registration campaign for the class, the school, or a local neighborhood. (See questions above to be considered.)

(3d) Invite a speaker from the League of Women Voters to speak to the class on the 18-year-old voter. Obtain copies of the League's pamphlet on the 18-year-old voter.

(3e) Organizing a debate is one approach toward evaluating the vote as a legal change process. The following topic is suggested as a means of stimulating student thinking: Resolved: The vote has become a useless ritual rather than an effective legal change process.

The following strategies are intended to increase understanding of the nature of civil disobedience, violent protest, and revolution, and to evaluate them as processes for bringing about change. Each related numbered set of strategies is related to the statement that precedes it.

DISCUSSION OF STRATEGIES AND RESOURCES

All processes by which individuals may express an interest in change are not legitimate; all are not provided for within the law. Certainly, one way to express a concern that law needs changing is to break it. When a person does this, he must expect that society will react by enforcing the law in point.

DETAILED DESCRIPTION OF STRATEGIES

1. Civil disobedience as a process for change.

(1a) Assign individual students, couples, or small groups of students to read pertinent parts of books dealing with civil disobedience and nonviolent protest. (See resource section for suggestions.) Students should endeavor to define civil disobedience, to compare it to legal protest and to other forms of illegal protest, and to evaluate its effectiveness in bringing about change.

(1b) Have the class or small groups of students view filmstrips on civil disobedience. (See resource section for suggestions.) Questions such as these may be used to guide the viewing:

- To what extent have extralegal means of influencing change been a part of the American scene?
- What is the classic description of civil disobedience?
- How does direct civil disobedience cause change?
- What are some of the philosophical considerations underlying civil disobedience? (Can the government break the law? What are the limits of civil disobedience?)
- What is a possible pattern by which simple protest may lead to revolutionary activity?
- What conflicting theories exist concerning the effectiveness of violent

DISCUSSION OF STRATEGIES AND RESOURCES

1. Classic civil disobedience. Conscientious nonconformity to law or classic civil disobedience includes cases where a particular objectionable law is broken with the express purpose of challenging its constitutionality in court. With this sort of extralegal activity, the actor sufficiently respects the system of law to submit to punishment for his transgression willingly if such punishment is determined to be appropriate by the legal process. Many of the nonviolent protests of Dr. Martin Luther King took the form of violating racist laws that the protestors wished to challenge in court.

Even where there is no constitutional issue to raise, this kind of civil disobedience might involve conscientiously accepting punishment for breaking the law as a lesser evil than conforming to the law in question. Laws that are the subjects of civil disobedience may not raise constitutional issues. The matter of the constitutionality of restricting public employees' rights to strike or drafting soldiers is fairly well settled. Nevertheless, teachers, policemen, firemen, or draftees may choose to disobey the law and suffer the consequences rather than abide by the law.

2. Violent protest. Violent protest involves violent activity either to bring about change through threats of coercive force or to bring about change through destroying the current legal order. Recently, on several campuses across the country, students have employed violent building takeovers as a tactic to force universities to change certain policies. Even more violent extremists have sought change through militant destruction by bombs and encouragement of chaos by looting and shooting in riot-torn cities.

protest? Explain your own position.
- What should one ask himself before breaking the law?

(1c) Using a fishbowl, round table discussion, or some other format conducive to a free exchange of ideas, have students explore each other's thinking on various aspects of civil disobedience. Suggestions and questions in the two preceding strategies may be used to guide discussion. Key matters to be considered are indicated below.

- What constitutes a classic case of civil disobedience?
- How does civil disobedience differ from legal protest?
- How does civil disobedience differ from other forms of illegal protest?
- Evaluate civil disobedience as a process for bringing out change.

(1d) Present this situation to groups of students for discussion and resolution.

A group of students use a room in the school each morning for prayer services. Students stress that attendance is voluntary and allude to the use of prayers in Congress. The school board voted approval of the student practice. The state commissioner of education indicated that the practice is "constitutionally impermissible."

3. Revolution. Our country was born in violent revolution. The Declaration of Independence refers to a right to abolish government when it fails to serve the people. Several states incorporated a right to abolish government in their constitutions.

The question becomes a practical one: If there is a right to revolution, who holds that right and when may they exercise it? According to democratic theory, governments derive their powers from the people. Thus, it is the people who hold the right to abolish government. It is clear that the *right* to revolution does not belong to any person who is unhappy with the present government, but identifying the will of the people is not easy.

When can a *right* to revolution be exercised? When government is abolished, something will fill the power vacuum. Perhaps the "when" of the right to revolution becomes a question of when the people perceive that the present government is less conducive to protecting life, liberty, and happiness than a revolutionary replacement would be; the people may then have a right to abolish their present government.

DETAILED DESCRIPTION OF STRATEGIES

DISCUSSION OF STRATEGIES AND RESOURCES

2. Violent protest as a process for change.

(2a) Divide the class into small information-gathering task forces. Have each task force use the *Readers Guide* or the *New York Times Index* to locate articles relating accounts of violent protest aimed at stimulating change. Articles may possibly be found in current local newspapers. Some accounts may be reproduced so all members of the class can read them. Possible cases might include the following:

- building bombings
- shooting police officers
- building takeovers on college campuses
- property destruction
- aircraft piracy

(2b) Using a fishbowl or other format, have students exchange ideas about violent protest in the light of their readings. Have discussants consider the following:

- Why was violent protest used as change process?
- Evaluate violent protest as a process for bringing about change.

(2c) Assign readings in materials related to the role of violence in American history. (See bibliographical entries in the resource section. Have students discuss this statement: Historically, violence has been an accepted means of bringing about change in American society. A formal debate may be staged if students are interested.

(2d) Present students with one or more brief accounts of violence aimed at bringing change. Have each student play the role of the President in determining how to deal with the violent dissent depicted in the accounts.

(2e) Students may read selected passages from the "Kerner Report," "A Study of Ghetto Rioters" in the August 1968 *Scientific American*, "The Nation of Newark" in the September/October 1972 *Society Magazine (Transaction)*, and/or other available sources. Have students discuss or debate whether or not violent protest by ghetto dwellers is effective and/or inevitable.

3. Revolution as a process for change.

(3a) Students can read the Declaration of Independence and excerpts from state constitutions (see resource section), which provide for a right of the people to abolish government. Have students speculate on the following:

- When is revolution justifiable?
- What proportion of the people have to support a revolution to make it just?
- What percent of the population of the Thirteen Colonies actively supported that revolution?
- How does history judge revolutions?

(3b) Students may pursue a number of books and other reading selections reflecting a range of thought on revolution. (See resource section for suggested titles.) Some might explore the thinking of revolutionaries whose ideas have persisted for some time. Others might read the ideas of contemporary revolutionaries of the extreme left. Ideas and feelings can be exchanged in a fishbowl arrangement.

(3c) In a fishbowl arrangement, have students consider the following:

- How does revolution differ from violent protest? (It should be observed that revolution aims at overturning the governmental system.)
- Why was revolution used as a change process?
- Evaluate revolution as a process for change.

(a) On the chalkboard or on a transparency, construct a diagram of a continuum of ways of influencing legal change (see page 12). Have students try to identify the locations on the continuum where particular instances of agitation for legal change fall. The teacher can use collected newspaper clippings and references to events recently depicted on TV news programs as the basis for this exercise. Any individual student voicing an opinion should be encouraged to go to the diagram and indicate with a mark (identified with his initials) where he would locate an event.

DETAILED DESCRIPTION OF STRATEGIES

DISCUSSION OF STRATEGIES AND RESOURCES

(b) As part of this exercise with the continuum, students may be asked to relate their individual case studies (which they are developing throughout this module) to the range of possibilities on the continuum. Each student could indicate what he thinks are the various methods of inducing change in the problem he has selected. He can locate the various methods on the continuum and then explain which one he thinks would be most effective. This part of the exercise could constitute an interim progress report by all students developing individual projects. Students can comment and offer suggestions on each other's projects.

(c) Have students consider one or more court cases which have explored the limits of legitimate free expression as a means of promoting change. Possible case studies include the following:

- Brandenberg v. Ohio
- Feiner v. New York
- Tinker v. Des Moines School District

Divide the class into small groups to consider cases. All groups can deal with the same case or several cases can be divided among the groups. A useful approach enabling a group to come to grips effectively with a case is illustrated below using Feiner v. New York as the example.

DETAILED DESCRIPTION OF STRATEGIES

Provide the group with a brief oral or written account of the background of the case similar to that provided on page 31. The group may discuss whether or not Feiner should have been arrested. Members of the group should be able to explain their reasoning.

Members of the group may engage in some role playing. Instruct the group that it will constitute a "court" to decide the case. After discussing the case, the "judges" will render a decision. Brief majority and minority decisions can be prepared in written form.

If different groups deal with different cases, a fishbowl format may be used to exchange conclusions.

Finally, have the various groups read the actual court decisions which settled the cases which have been considered. Follow-up discussion should focus on how and why the actual decision approximated or was different from the student decision. Responses from different groups of students to the same case can be further compared.

(d) Using an approach similar to the previous strategy, have students examine an example of civil disobedience to promote change that *might or might not* be considered peaceful. The following cases are illustrative:

- United States v. O'Brian
- United States v. Berrigan

DETAILED DESCRIPTION OF STRATEGIES

DISCUSSION OF STRATEGIES AND RESOURCES

(e) In discussion, summarizing various influences that bring change in the law, review the continuum. Break up into small groups to consider these questions:

- Why is it difficult to distinguish between socially productive and unproductive protest? Between legal and illegal? Betwen peaceful and violent?
- When does legal expression become illegal? When does civil disobedience become revolution?
- Which processes for influencing change are preferable? Why?

RESOURCES*

1. Resources Related to the Protection of Individual Free Expression

United States Constitution, Amendment I

Books and articles from the Muckraker Era, for example:

Sinclair, Upton. *The Jungle.*

Ralph Nader Study Group Reports (Grossman Publishers):

Esposito, John. *Vanishing Air.*
Fellmeth, Robert. *The Interstate Commerce Ommission.*
Townsend, Claire. *Old Age: The Last Segregation.*
Turner, James. *The Chemical Feast.*

Useful references for the teacher include:

Cohen, J. *"Lobbying," materials on legislation,* 2d ed. 1967. pp. 296-350.

Nutting, C.B. *"Pressure groups and lobbies," Cases and materials on legislation,* 4th ed. 1969. pp. 130-164.

State Education Department. Bureau of Secondary Curriculum Development. *American civilization in historic perspective, part 1.* Albany. 1970.

Contains a relevant unit entitled "Mass Media" which includes "The Power of the Press: A Case Study of the Tweed Ring," (pp. 3-34) and a selection of cartoons by Thomas Nast, (pp. 151-201). The reproductions of the cartoons can be used to make transparencies for use with an overhead projector.

*Direct quotations from statutes are indicated by the use of quotation marks. Other statements are summaries or paraphrases of the statute listed.

2. Resources Related to the Protection to Free Expression by Groups

United States Code, Title 2, "The Congress."

Section 266. Persons to whom chapter is applicable

"The provisions of this chapter shall apply to any person (except a political committee as defined in the Federal Corrupt Practices Act, and duly organized State or local committees of a political party), who by himself, or through any agent or employee or other persons in any manner whatsoever, directly or indirectly, solicits, collects, or receives money or any other thing of value to be used principally to aid, or the principal purpose of which person is to aid, in the accomplishment of any of the following purposes:

(a) The passage or defeat of any legislation by the Congress of the United States.

(b) To influence, directly or indirectly, the passage or defeat of any legislations by the Congress of the United States.

Section 267. Registration of lobbyists with Secretary of the Senate and Clerk of House; compilation of information

"(a) Any person who shall engage himself for pay or for any consideration for the purpose of attempting to influence the passage or defeat of any legislation by the Congress of the United States shall, before doing anything in furtherance of such object, register with the Clerk of the House of Representatives and the Secretary of the Senate and shall give to those officers in writing and under oath, his name and business address, the name and address of the person by whom he is employed, and in whose interest he appears or works, the duration of such employment, how much he is paid and is to receive, by whom he is paid or is to be paid, how much he is to be paid for expenses, and what expenses are to be included. Each such person so registered shall...file with the Clerk and Secretary, a detailed report under oath of all money received and expended by him...in carrying on his work; to whom paid; for what purposes; and the names of any papers, periodicals, magazines, or other publications in which he has caused to be published any articles or editorials; and the proposed legislation he is employed to support or oppose. The provisions of this section shall not apply to any person who merely appears before a committee of the Congress ...nor to any public official acting in his official capacity; nor in the case of any newspaper or other regularly published periodical (including any individual who owns, publishes, or is employed by any such newspaper or periodical) which in the ordinary course of business publishes new items, editorials, or other comments, or paid advertisements, which directly or indirectly urge the passage or defeat of legislation. ..."

3. Resources Related to the Right to Vote

United States Code, Title 42, "Public Health and Welfare," (1970).

SUBCHAPTER I-C.—REDUCING VOTING AGE TO EIGHTEEN IN FEDERAL, STATE, AND LOCAL ELECTIONS [NEW]

Section 1973bb. Congressional declaration and findings; prohibition of denial of right to vote because of age

"(a) The Congress finds and declares that the imposition and application of the requirement that a citizen be twenty-one years of age as a precondition to voting in any primary or in any election—

"(1) denies and abridges the inherent constitutional rights of citizens eighteen years of age but not yet twenty-one years of age to vote--a particularly unfair treatment of such citizens in view of the national defense responsibilities imposed upon such citizens;

"(2) has the effect of denying to citizens eighteen years of age but not yet twenty-one years of age the due process and equal protection of the laws that are guaranteed to them under the fourteenth amendment of the Constitution; and

"(3) does not bear a reasonable relationship to any compelling State interest.

"(b) In order to secure the constitutional rights set forth in subsection (a) of this section, the Congress declares that it is necessary to prohibit the denial of the right to vote to citizens of the United States eighteen years of age or over.

Section 1973bb—1. Prohibition of denial of right to vote because of age

"Except as required by the Constitution, no citizen of the United States who is otherwise qualified to vote in any State or political subdivision in any primary or in any election shall be denied the right to vote in any such primary or election on account of age if such citizen is eighteen years of age or older.

Section 1973bb—2. Enforcement—civil actions by the Attorney General; jurisdiction; three-judge district court; appeal to Supreme Court; expedition of cases

"(a) (1) In the exercise of the powers of the Congress under the necessary and proper clause of section 8, article I of the Constitution, and section 5 of the fourteenth amendment of the Constitution, the Attorney General is authorized and directed to institute in the name of the United States such actions against States or political subdivisions, including actions for injunctive relief, as he may determine to be necessary to implement the purposes of this subchapter.

"(2) The district courts of the United States shall have jurisdiction of proceedings instituted pursuant to this suochapter, which shall be heard and determined by a court of three judges in accordance with the provisions of section 2284 of Title 28, and any appeal shall lie to the Supreme Court. It shall be the duty of the judges designated to hear the case to assign the case for hearing and determination thereof, and to cause the case to be every way expedited.

Penalty

"(b) Whoever shall deny or attempt to deny any person of any right secured by this subchapter shall be fined not more than $5,000 or imprisoned not more than five years, or both."

United States Constitution - Amendment [XXVI]

Section 1. Right to vote—citizens eighteen years of age or older

"The right of citizens of the United States, who are eighteen years of age or older, to vote shall not be denied or abridged by the United States or by any State on account of age.

Section 2. Enforcement of article

"The Congress shall have power to enforce this article by appropriate legislation."

Dean of Students' Office. Cornell University. *Registration and voting information.* 1971.

1. Cases and Sources Related to the Limits of Legitimate Free Expression

Brandenburg v. Ohio. 395 U.S. Reports 444 (1969).

"The appellant, a leader of a Ku Klux Klan group. was convicted under the Ohio Criminal Syndicalism statute for 'advocat[ing]...the duty, necessity, or propriety of crime, sabotage, violence, or unlawful methods of terrorism as a means of accomplishing industrial or political reform' and for 'voluntarily assembl[ing] with any society group, or assemblage of persons formed to teach or advocate the doctrines of criminal syndicalism.' ... He was fined $1,000 and sentenced to one to 10 years' imprisonment. The appellant challenged the

constitutionality of the criminal syndicalism statute under the First and Fourteenth Amendments to the United States Constitution, but the intermediate appellate court of Ohio affirmed his conviction without opinion. The Supreme Court of Ohio dismissed his appeal, *sua sponte*, 'for the reason that no substantial constitutional question exists herein.' It did not file an opinion or explain its conclusions. Appeal was taken to this Court, and we noted probable jurisdiction.

"The record shows that a man, identified at trial as the appellant, telephoned an announcer-reporter on the staff of a Cincinnati television station and invited him to come to a Ku Klux Klan 'rally'... [T]he reporter and a cameraman attended the meeting and filmed the events. Portions of the films were later broadcast on the local station and on a national network. ...

"One film showed 12 hooded figures, some of whom carried firearms. They were gathered around a large wooden cross, which they burned. No one was present other than the participants and the newsmen who made the film. Most of the words uttered during the scene were incomprehensible...but scattered phrases could be understood... . Another scene on the same film showed the appellant, in Klan regalia, making a speech. ...

"...[D]ecisions have fashioned the principle that the constitutional guarantees of free speech and free press do not permit a State to forbid or proscribe advocacy of the use of force or of law violation except where such advocacy is directed to inciting or producing imminent lawless action and is likely to incite or produce such action. As we said in *Noto v. United States*,...'the mere abstract teaching...of the moral propriety or even moral necessity for a resort to force and violence, is not the same as preparing a group for violent action and steeling it to such action.' ... A statute which fails to draw this distinction impermissibly intrudes upon the freedoms guaranteed by the First and Fourteenth Amendments. It sweeps within its condemnation speech which our Constitution has immunized from governmental control. ...

"Measured by this test, Ohio's Criminal Syndicalism Act cannot be sustained. The Act punishes persons who 'advocate or teach the duty, necessity, or propriety' of violence 'as a means of accomplishing industrial or political reform'; or who publish or circulate or display any book or paper containing such advocacy; or who 'justify' the commission of violent acts 'with intent to exemplify, spread or advocate the propriety of the doctrines of criminal syndicalism'; or who 'voluntarily assemble' with a group formed 'to teach or advocate the doctrines of criminal syndicalism.' Neither the indictment nor the trial

judge's instructions to the jury in any way refined the statute's bald definition of the crime in terms of mere advocacy not distinguished from incitement to imminent lawless action.

"Accordingly, we are here confronted with a statute which, by its own words and as applied, purports to punish mere advocacy and to forbid, on pain of criminal punishment, assembly with others merely to advocate the described type of action. Such a statute falls within the condemnation of the First and Fourteenth Amendments."

"Reversed."

Feiner v. New York, 340 U.S. Reports 315 (1951).

Case Background:

Feiner, a college student, had conducted a highly controversial meeting. During the meeting, he had called the President a "bum," referred to the American Legion as a "Nazi Gestapo," and insulted the mayor of the city. Other of his remarks were aimed at getting blacks to secure their rights through militant action and use of violence. Feiner's remarks stirred up many in the group and it appeared to policemen who were present that there was an obvious threat of a riot developing. The police ordered Feiner to stop speaking. Feiner refused. The police arrested him and charged him with disorderly conduct. Feiner was tried, convicted, and served 30 days. He appealed to the U.S. Supreme Court claiming that his freedom of speech had been denied.

An edited version of this decision is contained in:

Commager, H.S., ed. *Documents of American history*. New York. Appleton-Century-Crofts.

The Feiner Case. Chicago. Encyclopedia Britannica Educational Corporation. Our Living Bill of Rights Series. 1968.

Sections of this booklet explore the dignity of the individual and the power of the state as background to the Feiner case. Final section investigates balance between freedom and security.

James, L.F. *The Supreme Court in American life*. Fairlawn, New Jersey. Scott, Foresman and Company.

Konvitz, M.R. *Bill of Rights reader: leading Constitutional cases.* Ithaca. Cornell University Press.

Tresolini, Rocco. *Constitutional decisions in American government.* New York. MacMillan Company.

____. *These liberties: case studies in civil rights.* New York. Lippincott Company. 1968. pp. 154-158.

FILM: "Freedom to Speak: The Feiner Case." Encyclopedia Britannica Educational Corporation.

Tinker v. Des Moines School District, 393 U.S. Reports 503 (1969).

Suspension of students from school overruled because wearing of black armbands as a protest to the war in Vietnam is free expression protected by the First Amendment.

Edited accounts of this decision are contained in:

"Students Who Wore Armbands" in *Dissent and Protest.* AEP Unit Books. 1970. pp. 18-20.

Bureau of Secondary Curriculum Development. *American civilization in historic perspective, part II: education.* Albany. State Education Department. 1972. pp. 15-16.

Contains excerpts from the majority decision by Justice Fortas and the minority decision by Justice Black.

A good discussion of the issues of this case are contained in:

"Did the Armbands Disrupt the School," *Liberty under law.* Columbus. American Education Publications, AEP Unit Books. 1972. p. 11.

2. Cases Involving Draft Card Burning and Destruction of Selective Service Records

United States v. O'Brian, 391 U.S. Reports 367. (1968).

Conviction under the selective service laws upheld because public burning of draft card as a protest to the Vietnam war is not protected expression under the First Amendment.

An edited version of United States v. O'Brian is contained in:

Mill, E.W. *Liberty and law: readings in American government.* Morristown, N.J. Silver Burdett Company. 1971.

United States v. Berrigan, 317 Federal Reporter Second Series 1002 (1969).

Destruction of selective service records.

"Priest Who Poured Blood on Files" in *Dissent and protest.* AEP Unit Books. 1970. pp. 14-16.

1. Resources Related to Civil Disobedience

Reference for the teacher:

Cornell University Libraries Bibliography Series Number 4. *Non-violence, an annotated bibliography.* 1971.

Materials from which the teacher can excerpt useful readings for student use include the following:

Bode, Carl, ed. *The portable Thoreau.* New York. The Viking Press. 1968.

Contains the best of Henry David Thoreau's writings including "Civil Disobedience" originally published 1849.

Fortas, Abe. *Concerning dissent and civil disobedience.* New York. New American Library. 1968.

Deals with the fundamental principles of dissent and civil disobedience.

Gandhi, M.K. *Non-violence in peace and war.* Ahmedabad. Navajiwan Press.

Collection of works 1944-49, 2d ed., 2 Vols.

____. *The essential Gandhi: his life, work, and ideas.* Louis Fischer, ed. New York. Vintage Books. 1962.

King, M.L. *Stride toward freedom, the Montgomery story.* New York. Harper. 1958.

History of the Montgomery bus boycotts.

Module 3

Lynd, Staughton, ed. *Non-violence in America: a documentary history.* New York. The Bobbs Merrill Company. 1966.

Traces concept of non-violence from earliest times in American history. Includes major essays by Thoreau ("Civil Disobedience"), William James ("The Moral Equivalent of War"), and King ("Pilgrimage to Nonviolence"). Other accounts from William Penn to David Dellinger.

Sibley, M.Q., ed. *The quiet battle, writings on the theory and practice of nonviolent resistance.* Chicago. Quadrangle Books. 1963.

Writings on the theory and practice of nonviolence.

Urguhart, Clara, ed. *A matter of life.* Boston. Little, Brown and Company. 1963.

Various thinkers explore the ethics of civil disobedience.

Text materials for students:

Dissent and protest. AEP Unit Books. 1970.

Text in pamphlet form. Useful for developing ideas in understanding III of this module.

Kane, Frank, ed. *Voices of dissent: positive good or disruptive evil?* Englewood Cliffs, N.J. Prentice-Hall. 1970.

A superior text in the series "Inquiry into Crucial American Problems." Touches upon the nature and history of dissent; explores causes of dissent, theories about dissent, and reactions to dissent. Concluding section addresses the question "What should be done about dissent?" Contains useful bibliography of books, articles, films, and filmstrips.

Filmstrips:

"Civil Disobedience." Guidance Associates. Pleasantville. 1968.

Materials include two full-color filmstrips, two 12" LP records (Part I - 19 minutes, Part II - 15 minutes) and a discussion manual (53 pages). Both parts have a conceptual framework. Part I develops the classic concept of civil disobedience and poses questions such as: "Can the government break the law?" What are the limits of civil disobedience?" Part II develops the nature of violent dissent, speculations as to its effectiveness, and asks: "What should the individual ask himself before breaking the law?"

"History of Dissent." New York Times.

Black-and-white filmstrip accompanied by 12" LP record. Compact pictorial history of dissent in the United States. Informational.

2. Resources Related to Violent Protest

Materials for the teacher from which excerpts may be taken for student use include:

Report of the national advisory commission on civil disorders. 1968. (The "Kerner Report").

Report of the national advisory committee on student unrest. 1970.

Useful guides to relevant articles include:

New York Times index.

Readers guide to periodical literature.

Materials of use to both teacher and students include the following:

Allen, R.F. & Adair, C.H. *Violence and riots in urban America.* Washington, Ohio. Charles A. Jones Publishing Co. 1969.

Various chapters explore violence in the American tradition, consider explanations for urban violence, examine riots as goal-directed behavior, and contain a case study of the Detroit riot of 1969.

Caplan, N.S. & Paige, J.M. "A study of Ghetto Rioters," *Scientific American.* August 1968. Vol. 219, No. 2. (Available as a seven-page reprint.)

Explores the reasons ghetto-dwellers riot by analyzing surveys made after the major riots of 1967 in Detroit and Newark; challenges some familiar hypotheses as to the cause of such violence.

Module 3

Heaps, W.A. *Riots U.S.A., 1765-1965.* New York. Seabury Press. 1966.

Analyzes the anatomy of a riot and recounts events in a number of riots from the Stamp Act riots of 1765 through riots and protests of the mid-1960's.

Hofstadter, Richard & Wallace, Michael, eds. *American violence: a documentary history.* New York. Vintage Books. 1970.

Collections of accounts divided among several categories of violence in American history: political, economic, racial, religious and ethnic, antiradical and policy, and personal. Other sections deal with assassinations and violence in the name of law.

Graham, H.D. & Gurr, T.R. *Violence in America: historical and comparative perspectives.* New York. Bantam. 1969.

Comprehensive compilation of reports delivered to the National Commission on the causes and prevention of violence.

"The nation of Newark," *Society magazine (Transaction).* September/October 1972. Vol. 9 No. 10. pp. 19-58.

Contains several articles relevant to the causes of violence in decaying urban centers: "Ghetto in City," "Parasitic Suburbs," "Political Brokers," and "Black Power in City Hall."

Rose, Thomas, ed. *Violence in America: a historical and contemporary reader.* New York. Vintage. 1969.

A collection of articles which explores the theory of violence, traces violence through American history, and focusses on violence in the 1960's. Among the contributors are Eldridge Cleaver, Steve Lerner, and Toni Hayden.

Wallace, Michael. "The uses of violence in American history," *The American scholar.* Winter, 1970-71. Vol. 40, No. 1. pp. 81-102.

Counters Americans' collective "historical amnesia" regarding violence in our past by analyzing the pattern of violent encounter in three areas: the violent suppression of blacks by whites, labor by capital, and recent immigrant groups by more established ones.

Zevin, Jack, ed. *Violence in America: What is the alternative?* Englewood Cliffs, N.J. Prentice-Hall. 1973.

Another superior text in the series "Inquiry into Crucial American Problems." Through explanation of the nature, causes, effects, and possibilities for coping with violence. Contains helpful bibliography of books, articles, and films.

3. Resources Related to Revolution

Provisions of constitutions which support a right to abolish government.

Declaration of Independence

"...whenever any form of government becomes destructive of the ends (of life, liberty and the pursuit of happiness) it is the right of the people to alter or abolish it..."

Maryland Constitution, Article I.

Government "originates from the People...(who) have at all times, the inalienable right to alter, reform or abolish their Form of Government in such manner as they may deem expedient."

Oregon Constitution, Article I, Section 1.

"(The people) have at all times a right to alter, reform, or abolish the government in such manner as they may think proper."

Classic and contemporary thinking regarding revolutions is reflected in the following selections:

Arendt, Hanna. *Crisis of the republic.* New York. Harcourt, Brace and Jovanovich. 1962.

____. *On revolution.* New York. Viking Press. 1963.

Beals, Carlton. *The nature of revolution.* New York. Crowell. 1970.

Bienen, Henry. *Violence and social change.* Chicago. University of Chicago Press. 1968.

Brinton, Crane. *The anatomy of revolution,* rev. ed. New York. Vintage Books. 1965.

Dellinger, Dave. *Revolutionary nonviolence.* New York. Bobbs-Merrill Company. 1970.

Fanon, Franz. *The wretched of the earth.* New York. Grove Press. 1968.

Ford, T.R., ed. *Revolutionary theme in contemporary America.* Lexington. University of Kentucky Press. 1965.

Guevara, Ernesto. *Che Guevara on revolution, a documentary overview.* Coral Cables. University of Miami Press. 1969.

____. *Che on guerilla warfare.* New York. Praeger. 1961.

Hope, Marjorie. *Youth against the world.* Boston. Little, Brown. 1970.

Jacobs, Harold, comp. *Weatherman.* Berkeley. Ramparts Press. 1971.

Jackson, George. *Blood in my eye.* New York. Random House. 1972.

Kropotkin, P.R. *Revolutionary pamphlets, a collection of writings.* Roger N. Baldwin, ed. New York. Benjamin Blom. 1968. (orginally early 1900's.)

____. *Selected writings on anarchism and revolution.* Martin A. Miller, ed. Cambridge. M.I.T. Press. 1970.

Lenin, Nikolai. *State and revolution.* New York. International Publishers. 1969. (originally 1917.)

Lookwood, Lee. *Conversations with Eldridge Cleaver, Algiers.* New York. McGraw-Hill. 1970.

Marcuse, Herbert. *Counterrevolution and revolt.* Boston. Beacon Press. 1971.

Marx, Karl. *On revolution.* Saul K. Padover, arr., ed. New York. 1971.

Nelson, T.J. *The right of revolution.* Boston. Beacon Press. 1968.

Ortega y Gasset, Jose. *The modern theme.* New York. Harper. 1961.

Tariq, Ali. *The new revolutionaries: a handbook of the internaticnal radical left.* New York. Marrow. 1969.

When all else fails: christian arguments on violent revolution. Philadelphia. Pilgrim Press. 1970.

UNDERSTANDING IV

IN OUR LEGAL SYSTEM, CHANGE MAY BE MADE BY ADMINISTRATIVE ACTION, BY LEGISLATIVE ENACTMENT, OR BY JUDICIAL DECISION.

A. *Explanation of Understanding IV*

Understanding IV focuses on the agent or institution which makes legal changes. After examining and evaluating the processes by which citizens can express interest in having the law changed, we now shift to the officials who actually implement legal change. Administrative officials probably make most legal changes in terms of sheer numbers, but these changes often concern relatively minor details of law's operation. For example, the Commissioner of Motor Vehicles might change the requirements for getting a driver's license or the local traffic bureau might change a STOP sign to a YIELD sign. Major legal change that relates to social change more often comes from the legislature or the courts.

When the term *lawmakers* is used, someone is usually referring to officials of the legislative branch at some level; for example, senators and representatives at the Federal level, assemblymen and senators at the New York State level, or town councilmen at the local level. Although legislators, as the people's representatives in government, are the source of most major legal change, they are not the only change agents.

Much significant legal change comes from judicial interpretation of the Constitution, of statutes, and of the common law (earlier cases). When a court reinterprets a constitutional provision, the change in law is just as real as if a legislature passed a statute demanding the same. A court's reinterpretation of a statute may result in so comprehensive and sweeping a change, that it is almost as if the legislature itself had written a new law. While the legislature has the power to pass new statutes changing common or judge-made law, much of the growth and change of common law comes from new judicial interpretations of rules of past cases.

B. *Teaching Understanding IV*

OBJECTIVES

- Given a series of changes in laws or rules affecting his life, the student can identify the agent or institution bringing about the change, and can apply the model for change in evaluating the change process involved.

Module 3

- In discussing a situation in which change is desirable, the student can compare the probable result of administrative action, legislative enactment, and judicial decision as applied to that situation.

QUESTIONS TO REACH UNDERSTANDING

- How is legal change made by administrative action; by legislative enactment; by judicial decision?
- To what extent do the legal changes made by administrative officials reflect the variation in people who hold these administrative posts?

Module 3

DETAILED DESCRIPTION OF STRATEGIES

Inform the class that the purpose behind the next several exercises is to learn who makes legal change within our legal system.

1. Legal change by administrative action.

   (a) Have students do one or more of the following:

   - Read Executive Order No. 11063 (see p. 45). (Directing government agencies to prevent discrimination on grounds of race, color, creed, and national origin in housing.)
   - Read the most recent regulations from the local Selective Service Board.
   - Review any example of administrative change familiar to students.

   Documents should be classified by the students concerning its source, and the changes effected by it.

   Students may then evaluate the change process brought about by the application of the document, in terms of the model process for change developed in conjunction with Understanding II (see p. 10).

   Discuss responses to these questions:

   - Who usually creates the posts filled by administrators?
   - Who usually places individuals in administrative posts?
   - What is the source of administrators' powers to make legal changes?

DISCUSSION OF STRATEGIES AND RESOURCES

1. Legal change by administrative action. The thousands of administrative positions in Federal, state, and local government are created by delegation of legislative power. The legislature creates administrative posts such as the health department, the education department, the highway department, and the state department. Normally these administrative positions are filled by executive appointment.

Pressures of time and limited knowledge make it impossible for elected representatives to make all the detailed rules necessary for the operation of complex governments. The same pressures make it impossible for judges to handle all conflicts that arise under these rules. Thus, many rules concerning the detailed operations of our legal system are made by administrative action, and many disputes under these rules are administratively resolved. Administrators, like legislators, are lawmakers. Administrators, like judges, are adjudicators. Administrative lawmaking accounts for some significant legal change.

2. Legal change by legislative enactment. Clearly, the primary role of the legislature is making and changing law. This is what we elect representatives to do. The legislature is probably the best suited branch of government to make and change laws, as it has facilities and procedures to gather facts, to hold hearings, and to investigate before making a representative legislative decision.

3. Legal change by court decision. When a court determines that the due process or equal protection

2. Legal change by legislative enactment.

(a) Have students read one of the following statutes or another law which resulted in a significant social change:

- The Federal law which gave 18-year-olds the vote, prior to the twenty-sixth Amendment (see p. 29).
- The New York State law legalizing abortion.

The document can then be classified in terms of source and changes effected by the document.

With reference to the model process for change (see p. 10), have students evaluate the change process in evidence in the document first read.

Discuss these questions:

- How and why are legislatures especially well suited to effect legal change?
- How are legal changes brought about by legislative action apt to differ from legal changes brought about by administrative action?

3. Legal change by judicial decision.

(a) Divide the class into several small groups or teams. Have each team read or review excerpts from one or more cases related to

clause of the Constitution requires that indigent criminal defendants be supplied with a lawyer or that public schools cannot be officially segregated, the court has made legal changes. The courts may also make such changes through interpretation of a statute or of common law.

Certain "common law" finds its original source not in statutes or constitutions but in earlier judicial decisions dating back to the start of this country or to English cases. There may be no statute that says one person can sue another for negligence or slander, or that certain exchanged promises are enforceable contracts. The courts, however, may make change through reinterpretation of common law. For example, in order to have a right to sue for a "trespass" to private property, it was traditionally necessary that the trespasser make a direct physical invasion of the property. A modern court may make change by allowing a trespass suit on the ground of destruction of property by air pollution.

an important legal change in one of the following categories:

- Legal change that resulted from judicial reinterpretation of the Constitution.
  - Brown v. Board of Education
  - Harper v. Virginia
  - In Re Gault
- Legal change that resulted from judicial interpretation of a statute.
  - Monroe v. Pape
  - Scenic Hudson Preservation Conference v. Federal Power Commission
  - Federal Trade Commission v. Colgate Palmolive Company
  - State v. Siirila
- Legal change that resulted from judicial interpretation of the common law.
  - Martin v. Reynolds Metal Company
  - MacPherson v. Buick Motor Company

Have each team determine what important legal changes were effected in the case or cases considered by that team, and what point or statement was reinterpreted in the court action.

Through use of a fishbowl or similar reporting format, the various groups can exchange their findings and evaluate judicial action as a change process (see p. 10).

DETAILED DESCRIPTION OF STRATEGIES

DISCUSSION OF STRATEGIES AND RESOURCES

(b) In a summarizing discussion, have students compare and contrast the three major types of changes presented in this understanding. Discussion questions might include the following:

- Which type of change would be most often concerned with minor details in the law's operation? Explain.
- Which type of legal change would be most likely to relate to broad social change? Explain.
- Why is the term "lawmaker" somewhat misleading?
- How are important changes in laws most likely to be effected?
- In what way does the common law continue to "grow" and evolve?
- How does each of the three change processes compare in terms of the model process for change?
- Why was each particular change process used in each particular instance that was considered?

RESOURCES*

1. Legal Change by Administrative Action

Executive Order No. 11063. United States Code, Title 42, "Public Health and Welfare." (1962).

EQUAL OPPORTUNITY IN HOUSING

"WHEREAS the granting of Federal assistance for the provision, rehabilitation, or operation of housing and related facilities from which Americans are excluded because of their race, color, creed, or national origin is unfair, unjust, and inconsistent with the public policy of the United States as manifested in its Constitution and laws; and ...

"NOW, THEREFORE, by virtue of the authority vested in me as President of the United States by the Constitution and laws of the United States, it is ordered as follows:

PART I—PREVENTION OF DISCRIMINATION

"Section 101. I hereby direct all departments and agencies in the executive branch of the Federal Government, insofar as their functions relate to the provision, rehabilitation, or operation of housing and related facilities, to take all action necessary and appropriate to prevent discrimination because of race, color, creed, or national origin—

(a) in the sale, leasing, rental, or other disposition of residential property and related facilities (including land to be developed for residential use), or in the use or occupancy thereof, if such property and related facilities are—

(i) owned or operated by the Federal Government, or
(ii) provided in whole or in part with the aid of loans, advances, grants, or contributions hereafter agreed to be made by the Federal Government, ...

"Section 102. I hereby direct the Housing and Home Finance Agency and all other executive departments and agencies to use their good offices and to take other appropriate action permitted by law, including the institution of appropriate litigation, if required, to promote the abandonment of discriminatory practices with respect to residential property and related facilities heretofore provided with Federal financial asistance... .

*Direct quotations from statutes are indicated by the use of quotation marks. Other statements are summaries or paraphrases of the statute listed.

PART II—IMPLEMENTATION BY DEPARTMENTS AND AGENCIES

"Section 201. Each executive department and agency subject to this order is directed to submit to the President's Committee on Equal Opportunity in Housing established pursuant to Part IV of this order (hereinafter sometimes referred to as the Committee),...a report outlining all current programs administered by it which are affected by this order.

"Section 202. Each such department and agency shall be primarily responsible for obtaining compliance with the purposes of this order as the order applies to programs administered by it... .

"Section 203. Each such department and agency shall...as may be consistent with law and necessary or appropriate to effectuate the purposes of this order. ...

PART III—ENFORCEMENT

"Section 302. If any executive department or agency subject to this order concludes that any person or firm...or any State or local public agency has violated any rule, regulation, or procedure issued or adopted pursuant to this order...it shall endeavor to end and remedy such violation by informal means, including conference, conciliation, and persuasion... . In conformity with rules, regulations, procedures, or policies issued or adopted by it... a department or agency may take such action as may be appropriate under its governing laws, including, but not limited to, the following:

It may—

(a) cancel or terminate in whole or in part any agreement or contract... .
(b) refrain from extending any further aid under any program administered by it... .

"Section 303. In appropriate cases executive departments and agencies shall refer to the Attorney General violations of any rules, regulations, or procedures issued or adopted pursuant to this order. ...

PART IV—ESTABLISHMENT OF THE PRESIDENT'S COMMITTEE ON EQUAL OPPORTUNITY IN HOUSING

"Section 401. There is hereby established the President's Committee on Equal Opportunity in Housing... .

PART V—POWERS AND DUTIES OF THE PRESIDENT'S COMMITTEE ON EQUAL OPPORTUNITY IN HOUSING

"Section 502. (a) The Committee shall take such steps as it deems necessary and appropriate to promote the coordination of the activities of departments and agencies under this order. ...

PART VI—MISCELLANEOUS

"Section 602. This order shall become effective immediately.

"JOHN FITZGERALD KENNEDY"

2. Legal Change by Legislative Enactment

United States Code, Title 42, "Public Health and Welfare," Section 1973bb, (1970).

See the resource section for Understanding III of Module III for excerpts.

New York Penal Law, 1970.

Section 125.05. Homicide, abortion and related offenses; definition of terms

"The following definitions are applicable to this article:

1. 'Person,' when referring to the victim of a homicide, means a human being who has been born and is alive.
2. 'Abortional act' means an act committed upon or with respect to a female, whether by another person or by the female herself, whether she is pregnant or not, whether directly upon her body or by the administering, taking or prescription of drugs or in any other manner, with intent to cause a miscarriage of such female.
3. 'Justifiable abortional act.' An abortional act is justifiable when committed upon a female with her consent by a duly licensed physician acting (a) under a reasonable belief that such is necessary to preserve her life, or, (b) within twenty-four weeks from the commencement of her pregnancy. A pregnant female's commission of an abortional act upon herself is justifiable when she acts upon the advice of a duly licensed physician (1) that such act is necessary to preserve her life, or, (2) within twenty-four weeks from the commencement of her pregnancy. The submission by a female to an abortional act is justifiable when she believes that it is being committed by a duly licensed physician, acting under a reasonable belief that such act is necessary to preserve her life, or, within twenty-four weeks from the commencement of her pregnancy."

Module 3

3. Legal Change by Judicial Decision

Readily available sources containing edited versions of decisions are listed following the official citations. Less readily obtainable decisions are contained in this resource section in edited form.

Brown v. Board of Education, 347 U.S. Reports, 483 (1954).

See resource section for Understanding IV of Module I.

Harper v. Virginia, 383 U.S. Reports, 666 (1966).

National Council for the Social Studies. *Judgment series*, No. 8, "The Poll Tax Case." 1967.

Tresolini. *These liberties: case studies in civil rights.* New York. Lippincott Company. pp. 241-245.

In Re Gault, 387 U.S. Reports, 1 (1967).

Konovitz. *Bill of Rights reader: leading Constitutional cases*, 4th ed. Ithaca. Cornell University Press. pp. 973ff.

National Council for the Social Studies. *Judgment series*, No. 12, "Due Process and the Juvenile Court." 1968.

Oregon State Bar Association. *Liberty and law: case studies in the Bill of Rights. The Privilege against self incrimination.* pp. 12-14.

Pearson, Craig & Cutler, Charles. *Liberty under law.* pp. 27-28.

Ratcliff, R.H., ed. *Justice in urban America series. Youth and the law.* pp. 72-78.

Tresolini. *These liberties.* pp. 87-100.

Monroe v. Pape, 365 U.S. Reports, 167 (1960).

"Mr. Justice Douglas delivered the opinion of the Court.

"This case presents important questions concerning the construction of R. S. §1979, 42 U. S. C. §1983, which reads as follows:

> 'Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceedings for redress.'

"The complaint alleges that 13 Chicago police officers broke into petitioners' home in the early morning, routed them from bed, made them stand naked in the living room, and ransacked every room, emptying drawers and ripping mattress covers. It further alleges that Mr. Monroe was then taken to the police station and detained on 'open' charges for 10 hours, while he was interrogated about a two-day-old murder, that he was not taken before a magistrate, though one was accessible, that he was not permitted to call his family or attorney, that he was subsequently released without criminal charges being preferred against him. It is alleged that the officers had no search warrant and no arrest warrant and that they acted 'under color of the statutes, ordinances, regulations, customs and usages' of Illinois and of the City of Chicago. Federal jurisdiction was asserted under R. S. §1979, which we have set out above... .

"The City of Chicago moved to dismiss the complaint on the ground that it is not liable under the Civil Rights Acts nor for acts committed in performance of its governmental functions. All defendants moved to dismiss, alleging that the complaint alleged no cause of action under those Acts or under the Federal Constitution. The District Court dismissed the complaint. The Court of Appeals affirmed... . The case is here on a writ of certiorari which we granted because of a seeming conflict of that ruling with our prior cases. ...

"I. Petitioners claim that the invasion of their home and the subsequent search without a warrant and the arrest and detention of Mr. Monroe without a warrant and without arraignment constituted a deprivation of their 'rights, privileges, or immunities secured by the Constitution' within the meaning of R. S. §1979. ...

"...So far petitioners are on solid ground. For the guarantee against unreasonable searches and seizures contained in the Fourth Amendment has been made applicable to the States by reason of the Due Process Clause of the Fourteenth Amendment. ...

"II. There can be no doubt...that Congress has the power to enforce provisions of the Fourteenth Amendment against those who carry a badge of authority of a State and represent it in some capacity, whether they act in accordance with their authority or misuse it. ... The question with which we now deal is the narrower one of whether Congress, in enacting §1979, meant to give a remedy to parties deprived of constitutional rights, privileges and immunities by an official's abuse of his position. ...

"It is argued that 'under color of' enumerated state authority excludes acts of an official or policeman who can show no authority under state law, state custom, or state usage to do what he did. In this case it is said that these policemen, in breaking into petitioners' apartment, violated the Constitution and laws of Illinois. It is pointed out that under Illinois law a simple remedy is offered for that violation and that, so far as it appears, the courts of Illinois are available to give petitioners that full redress which the common law affords for violence done to a person; and it is earnestly argued that no 'statute, ordinance, regulation, custom or usage' of Illinois bars that redress.

"The Ku Klux Act grew out of a message sent to Congress by President Grant on March 23, 1871... .

"The [Congressional] debates were long and extensive. It is abundantly clear that one reason the legislation was passed was to afford a federal right in federal courts because, by reason of prejudice, passion, neglect, intolerance or otherwise, state laws might not be enforced and the claims of citizens to the enjoyment of rights, privileges, and immunities guaranteed by the Fourteenth Amendment might be denied by the state agencies. ...

"Although the legislation was enacted because of the conditions that existed in the South at that time, [1871], it is cast in general language and is as applicable to Illinois as it is to the States whose names were mentioned over and again in the debates. It is no answer that the State has a law which if enforced would give relief. The federal remedy is supplementary to the state remedy, and the latter need not be first sought and refused before the federal one is invoked. Hence the fact that Illinois by its constitution and laws outlaws unreasonable searches and seizures is no barrier to the present suit in the federal court.

"So far, then, the complaint states a cause of action. There remains to consider only a defense peculiar to the City of Chicago.

"III. The City of Chicago asserts that it is not liable under §1979. We do not stop to explore the whole range of questions tendered us on this issue at oral argument and in the briefs. For we are of the opinion that Congress did not undertake to bring municipal corporations within the ambit §1979. ...

"The response of the Congress to the proposal to make municipalities liable for certain actions being brought within federal purview by the Act of April 20, 1871, was so antagonistic that we cannot believe that the word 'person' was used in this particular Act to include them. Accordingly we hold that the motion to dismiss the complaint against the City of Chicago was properly granted. But since the complaint should not have been dismissed against the officials the judgment must be and is

"Reversed."

Scenic Hudson Preservation Conference v. Federal Power Commission, 354 Federal Reports, Second Series, 608 (1965).

"HAYS, Circuit Judge:

"In this proceeding the petitioners are the Scenic Hudson Preservation Conference, an unincorporated association consisting of a number of non-profit, conservationist organizations, and the Towns of Cortlandt, Putnam Valley and Yorktown. Petitioners ask us, pursuant to §313(b) of the Federal Power Act, 16 U.S.C. §825*l*(b) to set aside three orders of the respondent, the Federal Power Commission:

(a) An order of March 9, 1965 granting a license to the intervener, the Consolidated Edison Company of New York, Inc., to construct a pumped storage hydroelectric project on the west side of the Hudson River at Storm King Mountain in Cornwall, New York;

(b) An order of May 6, 1965 denying petitioners' application for a rehearing of the March 9 order, and for the reopening of the proceeding to permit the introduction of additional evidence;

(c) An order of May 6, 1965 denying joint motions filed by the petitioners to expand the scope of supplemental hearings to include consideration of the practicality and cost of underground transmission lines, and the feasibility of *any* type of fish protection device.

"A pumped storage plant generates electric energy for use during peak load periods, using hydroelectric units driven by water from a headwater pool or reservior. The contemplated Storm King project would be the largest of its kind in the world. Consolidated Edison has estimated its cost, including transmission facilities, at $162,000,000. ... The storage reservoir, located over a thousand feet above the powerhouse, is to be connected to the powerhouse, located on the river front, by a tunnel 40 feet in diameter. The powerhouse, which is both a pumping and generating station, would be 800 feet long and contain eight pump generators.

"Transmission lines would run under the Hudson to the east bank and then underground for 1.6 miles to a switching station which Consolidated Edison would build at Nelsonville in the Town of Philipstown. Thereafter, overhead transmission lines would be placed on towers 100 to 150 feet high and these would require a path up to 125 feet wide through Westchester and Putnam Counties for a distance of some 25 miles until they reached Consolidated Edison's main connections with New York City.

"During slack periods Consolidated Edison's conventional steam plants in New York City would provide electric power for the pumps at Storm King to force water up the mountain, through the tunnel, and into the upper reservoir. In peak periods water would be released to rush down the mountain and power the generators. Three kilowatts of power generated in New York City would be necessary to obtain two kilowatts from the Cornwall installation. When pumping the powerhouse would draw approximately 1,080,000 cubic feet of water per minute from the Hudson, and when generating would discharge up to 1,620,000 cubic feet of water per minute into the river. ... The water in the upper reservior may be regarded as the equivalent of stored electric energy; in effect, Consolidated Edison wishes to create a huge storage battery at Cornwall. ...

[1] To be licensed by the Commission a prospective project must meet the statutory test of being 'best adapted to a comprehensive plan for improving or developing a waterway,'... .

[2,3] If the Commission is properly to discharge its duty in this regard, the record on which it bases its determination must be complete. The petitioners and the public at large have a right to demand this completeness. It is our view, and we find, that the Commission has failed to compile a record which is sufficient to support its decision. The Commission has ignored certain relevant factors and failed to make a thorough study of possible alternatives to the Storm King project. While the courts have no authority to concern themselves with the policies of the Commission, it is their duty to see to

it that the Commission's decisions receive that careful consideration which the statute contemplates. ...

"I. The Storm King project is to be located in an area of unique beauty and major historical significance. The highlands and gorge of the Hudson offer one of the finest pieces of river scenery in the world. ...

"The Federal Water Power Act of 1920, 41 Stat. 1063 (1920)...was the outgrowth of a widely supported effort on the part of conservationists to secure the enactment of a complete scheme of national regulation which would promote the comprehensive development of the nation's water resources. ...

"II. Respondent argues that 'petitioners do not have standing to obtain review' because they 'make no claim of any personal economic injury resulting from the Commission's action.'

"...The 'case' or 'controversy' requirement of Article III, §2 of the Constitution does not require that an 'aggrieved' or 'adversely affected' party have a personal economic interest. ...

"[6,7] In order to insure that the Federal Power Commission will adequately protect the public interest in the aesthetic, conservational, and recreational aspects of power development, those who by their activities and conduct have exhibited a special interest in such areas, must be held to be included in the class of 'aggrieved' parties... . We hold that the Federal Power Act gives petitioners a legal right to protect their special interests. ...

"[8] Moreover, petitioners have sufficient economic interest to establish their standing. The New York-New Jersey Trail Conference, one of the two conservation groups that organized Scenic Hudson, has some seventeen miles of trailways in the area of Storm King Mountain. Portions of these trails would be inundated by the construction of the project's reservoir.

"...The towns that are co-petitioners with Scenic Hudson have standing because the transmission lines would cause a decrease in the proprietary value of publicly held land, reduce tax revenues collected from privately held land, and significantly interfere with long-range community planning. ...

"III. ...The Commission in its opinion recognized that in connection with granting a license to Consolidated Edison it 'must compare the Cornwall project with any alternatives that are available.' There is no doubt that the Commission is under a statutory duty to give full consideration to alternative plans. ...

"...[T]estimony...as to the feasibility of an alternative to the project, the use of gas turbines, was offered to the Commission by...a taxpayer and consumer group. The petition to intervene and present this new evidence was rejected...as not 'timely.' It was more than two months after the offer of this testimony, on March 9, 1965, that the Commission issued a license to Consolidated Edison. ... ...we have found in the record no meaningful evidence which contradicts the proffered testimony supporting the gas turbine alternative. ...

"...we must conclude that there was no significant attempt to develop evidence as to the gas turbine alternative; at least, there is no such evidence in the record. ...

"Especially in a case of this type, where public interest and concern is so great, the Commission's refusal to receive...testimony, as well as proffered information on fish protection devices and underground transmission facilities, exhibits a disregard of the statute and of judicial mandates instructing the Commission to probe all feasible alternatives. ...

"IV. The Federal Power Commission argues that having intervened 'petitioners cannot impose an affirmative burden on the Commission.' But, as we have pointed out, Congress gave the Federal Power Commission a specific planning responsibility. ... The totality of a project's immediate and long-range effects, and not merely the engineering and navigation aspects, are to be considered in a licensing proceeding. ...

"In addition to the Commission's failure to receive or develop evidence concerning the gas turbine alternative, there are other instances where the Commission should have acted affirmatively in order to make a complete record.

"The Commission neither investigated the use of interconnected power as a possible alternative to the Storm King project, nor required Consolidated Edison to supply such information. ...

"...We find no indication that the Commission seriously weighed the aesthetic advantages of underground transmission lines against the economic disadvantages.

"At the time of its original hearings, there was sufficient evidence before the Commission concerning the danger to fish to warrant further inquiry.

"On remand, the Commission should take the whole fisheries question into consideration before deciding whether the Storm King project is to be licensed.

"The Commission should reexamine all questions on which we have found the record insufficient and all related matters. The Commission's renewed proceedings must include as a basic concern the preservation of natural beauty and of national historic shrines, keeping in mind that, in our affluent society, the cost of a project is only one of several factors to be considered. The record as it comes to us fails markedly to make out a case for the Storm King project on, among other matters, costs, public convenience and necessity, and absence of reasonable alternatives. Of course, the Commission should make every effort to expedite the new proceedings.

"Petitioners' application, pursuant to Federal Power Act §313 (b), 16 U.S.C. §825l (b), to adduce additional evidence concerning alternatives to the Storm King project and the cost and practicality of underground transmission facilities is granted.

"The licensing order of March 9 and the two orders of May 6 are set aside, and the case remanded for further proceedings."

Federal Trade Commission v. Colgate-Palmolive Company, 380 U.S. Reports, 374 (1965).

(Interprets provision of FTC Act outlawing "unfair or deceptive acts or practices in commerce" as prohibiting advertising which represents falsely that a televised test provides a viewer with visual proof of a product claim, even if the product claim is true.)

This case is available in the following source:

National Council for the Social Studies. *Judgment series.* No. 10, "Deceptive TV Advertising," 1967.

State v. Siirila. Vol. 292, Minnesota Reports, Part 1. (1971).

"KNUTSON, CHIEF JUSTICE.

"Defendant, after waiving jury trial in open court, was convicted of possession of a narcotic drug, Cannabis Sativa L., commonly known as marijuana, in violation of Minn. St. 1969, §§ 618.01, 618.02, and 618.21, subd. 1. ...

"A warrant was obtained by the Minneapolis Police Department on October 25, 1968, to search one 'Bob Jones...' Probable cause for the search warrant was based upon information received from a reliable informant. ...

"On the night the warrant was issued, the police received a call from their informant stating that 'Jones' would be near or at the corner of 5th Street and Cedar Avenue in Minneapolis... .

"...They recognized him from the description of his person and attire as the person described in the warrant... .

"Two of the officers approached defendant...identified themselves, and inquired whether he was 'Bob Jones.' He answered that he used that name but that his real name was Bob Siirila. He was taken into a back room of the drugstore and searched, but nothing was found. The officers then took him to their car, where they searched him once more and found nothing. Defendant was then taken to the police station, where his coat was removed and examined, and the officers found what appeared to be traces of a green, plant-like substance, similar to marijuana. Defendant was then placed under arrest for possession of marijuana.

"The substance found in defendant's jacked was examined by a chemist of the Minneapolis Public Health Service, who testified that it was marijuana. There were less than 20 milligrams altogether. The chemist testified that she could determine that the substance was marijuana by a comparative microscopic test.

"Defendant had been previously arrested on October 16, 1968. ...

"The main thrust of defendant's argument on this appeal is that possession of an unusable quantity of marijuana does not constitute a crime. He relies mainly on our decision in State v. Resnick,...and State v. Morgan,... .

"Our decision in Resnick is based for the most part on a determination that the evidence of *possession* of a narcotic was insufficient to sustain the conviction. ...

"In both Resnick and Morgan we were searching for legislative intent. It is a legislative function to say what acts shall constitute a crime. That is as true of narcotics laws as of any other. In Morgan, we came to the conclusion that the legislature did not intend

possession of a minimal unusable quantity of marijuana to be a felony punishable by 20 years' imprisonment.

"Since our decision in Resnick and Morgan and the hearing on the case now before us, the legislature has again been in session. ...

"...It is obvious that in adopting Ex. Sess. H. F. 178 § 17, and Ex. Sess. S. F. 132...the legislature in unmistakable terms declared posssession of *any* amount of marijuana a crime. We see no escape from this conclusion. ...

"In the light of the holding in the great majority of jurisdictions that that have adopted the Uniform Narcotic Drug Act, and more particularly in the light of the expression of legislative intent found in the recent adoption of L. 1971, c. 937, as amended by Ex. Sess. L. 1971, cc. 38 and 48, § 17, we feel compelled to hold that Morgan and Resnick, in so far as they are based on lack of possession of a usable quantity of marijuana, are no longer tenable or controlling. It must follow that under the law as it existed prior to the adoption of L. 1971, c. 937, and Ex. Sess. L. 1971, cc. 38 and 48, §17, the legislature must likewise have intended that possession of even an unusable quantity of marijuana was a crime and that, based thereon, the lower court's determination that possession of the amount of marijuana found in defendant's jacket is a crime must be sustained. ...

"While a 20-year sentence for possession of an unusable quantity of marijuana may seem unreasonably harsh if other provisions of the Youth Conservation Act are not considered, the realities of the case are that defendant here was not subjected to unduly severe treatment. ...The YCC has many options as to what treatment should be accorded a youthful offender, from probation to incarceration. It appears from the records of the YCC that after sentence was pronounced defendant was admitted to the Reception and Diagnostic Center at Lino Lakes on December 20, 1968. On January 6, 1969, he was transferred to the State Reformatory. At the beginning, defendant had difficulty adjusting satisfactorily, but in December 1969, when the commission reviewed his progress, he was enrolled in a high school course and asked to be permitted to remain at the reformatory until he could complete that course, which he did. He graduated in June 1970 and was then granted an interstate parole and permitted to move to California to live with his mother. On June 24, 1971, he was discharged and his civil rights were restored under § 242.31... .

"'Such orders restore the defendant to his civil rights and purge and free him from all penalties and disabilities arising from such conviction and it shall not thereafter be used against him, except in a criminal prosecution for a subsequent offense if otherwise admissible therein.' ...

"If there ever was a case where the wisdom of the Youth Conservation Act has been demonstrated, it is this case. Defendant is now apparently a rehabilitated young man; so far as the laws permit, his conviction has been wiped out. If he stays out of trouble, this conviction can no longer be held against him. Everything has been done for him that can be done, and it would seem that at this time the case before us has become largely moot. While we feel that we must affirm the conviction, based upon legislative intent as we see it in view of the recent legislative act, we do so in the knowledge that the conviction has been nullified by act of the YCC so far as it can lawfully do so. ...

"Affirmed."

Martin v. Reynolds Metal Company, 242, Pacific Reporter, Second Series 790 (1959).

"O'CONNELL, Justice.

"This is an action of trespass. The plaintiffs allege that during the period from August 22, 1951 to January 1, 1956 the defendant, in the operation of its aluminum reduction plant near Troutdale, Oregon caused certain fluoride compounds in the form of gases and particulates to become airborne and settle upon the plaintiffs' land rendering it unfit for raising livestock during that period. Plaintiffs allege that their cattle were poisoned by ingesting the fluorides which contaminate the forage and water on their land. They sought damages in the amount of $450,000 for the loss of use of their land for grazing purposes and for the deterioration of the land through the growth of brush, trees and weeds resulting from the lack of use of the premises for grazing purposes. The plaintiffs also sought punitive damages in the amount of $30,000.

"The plaintiffs and the defendant each moved for a directed verdict, whereupon the trial court found that the plaintiffs had suffered damage in the amount of $71,500 in the loss of use of their land and $20,000 for the deterioration of their land and entered judgment accordingly. The trial court rejected the plaintiffs' claim for punitive damages. ...

"There is evidence to prove that during the period from August, 1951, to January, 1956 the emanation of fluorides from defendant's plant averaged approximately 800 pounds daily. Some of this discharge was deposited upon the plaintiffs' land. There is sufficient evidence to support the trial court's finding that the quantity of fluorides deposited upon plaintiffs' land was great enough to cause $91,500 damage to the plaintiffs in the use of their land for grazing purposes and in the deterioration of their land as alleged. ...

"...Although in such cases the separate particles which collectively cause the invasion are minute, the deposit of each of the particles constitutes a physical intrusion and, but for the size of the particle, would clearly give rise to an action of trespass. The defendant asks us to take account of the difference in size of the physical agency through which the intrusion occurs... .

"The view recognizing a trespassory invasion where there is no 'thing' which can be seen with the naked eye undoubtedly runs counter to the definition of trespass expressed in some quarters. ... It is quite possible that in an earlier day when science had not yet peered into the molecular and atomic world of small particles, the courts could not fit an invasion through unseen physical instrumentalities into the requirement that a trespass can result only from a direct invasion. But in this atomic age even the uneducated know the great and awful force contained in the atom and what it can do to a man's property if it is released. In fact, the new famous equation $E = mc^2$ has taught us that mass and energy are equivalents and that our concept of 'things' must be reframed. If these observations on science in relation to the law of trespass should appear theoretical and unreal in the abstract, they become very practical and real to the possessor of land when the unseen force cracks the foundation of his house. The force is just as real if it is chemical in nature and must be awakened by the intervention of another agency before it does harm.

"If, then, we must look to the character of the instrumentality which is used in making an intrusion upon another's land we prefer to emphasize the object's energy or force rather than its size. Viewed in this way we may define trespass as any intrusion which invades the possessor's protected interest in exclusive possession, whether that intrusion is by visible or invisible pieces of matter or by energy which can be measured only by the mathematical language of the physicist.

"[3] We are of the opinion, therefore, that the intrusion of the fluoride particulates in the present case constituted a trespass. ...

"We hold that the defendant's conduct in causing chemical substances to be deposited upon the plaintiffs' land fulfilled all of the requirements under the law of trespass.

"[4] The defendant contends that trespass will not lie in this case because the injury was indirect and consequential and that the requirement that the injury must be direct and immediate to constitute a trespass was not met. We have held that the deposit of the particulates upon the plaintiff's land was an intrusion within the definition of trespass.

That intrusion was direct. The damages which flowed from it are consequential, but it is well established that such consequential damage may be proven in an action of trespass. ...

"[5] The trial court found that the fluoride compounds emitted from the defendant's plant between August 22, 1951 and January 1, 1956 rendered plaintiffs' land and the drinking water on the land unfit for consumption by livestock grazing thereon. The defendant contends that there is no substantial evidence to support this finding. In support of this contention the defendant points to the effectiveness of the fume control system which was installed in 1950 prior to August 22, 1951, the beginning of the period during which the plaintiffs alleged that the damage occurred. The evidence is conflicting but there is substantial evidence from which the trial court could have connected the emanation of the fluorides with the damage alleged. We cannot, therefore, disturb the trial court's finding. ...

"The judgment of the lower court is affirmed. ..."

MacPherson v. Buick Motor Co., 217, New York Reports 382, (1916).

"CARDOZO, J. The defendant is a manufacturer of automobiles. It sold an automobile to a retail dealer [in Schenectady, N.Y.]. The retail dealer resold to the plaintiff. While the plaintiff was in the car, it suddenly collapsed. He was thrown out and injured. One of the wheels was made of defective wood, and its spokes crumbled into fragments. The wheel was not made by the defendant; it was bought from another manufacturer. There is evidence, however, that its defects could have been discovered by reasonable inspection, and that inspection was omitted. There is no claim that the defendant knew of the defect and willfully concealed it. ... The charge is one, not of fraud, but of negligence. The question to be determined is whether the defendant owed a duty of care and vigilance to any one but the immediate purchaser. ...

"...If the nature of a thing is such that it is reasonably certain to place life and limb in peril when negligently made, it is than a thing of danger. Its nature gives warning of the consequences to be expected. If to the element of danger there is added knowledge that the thing will be used by persons other than the purchaser, and used without new tests, then, irrespective of contract, the manufacturer of this thing of danger is under a duty to make it carefully. That is as far as we are required to go for the decision of this case. There must be knowledge of a danger, not merely possible, but probable. It is possible to use almost anything in a way that will make it dangerous if defective. That is not enough to charge the manufacturer with a duty independent of his

contract. Whether a given thing is dangerous may be sometimes a question for the court and sometimes a question for the jury. There must also be knowledge that in the usual course of events the danger will be shared by others than the buyer. Such knowledge may often be inferred from the nature of the transaction. But it is possible that even knowledge of the danger and of the use will not always be enough. The proximity or remoteness of the relation is a factor to be considered. We are dealing now with the liability of the manufacturer of the finished product, who puts it on the market to be used without inspection by his customers. If he is negligent, where danger is to be foreseen, a liability will follow. We are not required at this time to say that it is legitimate to go back of the manufacturer of the finished product and hold the manufacturers of the component parts. To make their negligence a cause of imminent danger, an independent cause must often intervene; the manufacturer of the finished product must also fail in his duty of inspection. It may be that in those circumstances the negligence of the earlier members of the series is too remote to constitute, as to the ultimate user, an actionable wrong. ...

"From...survey of...decisions, there thus emerges a definition of the duty of a manufacturer which enables us to measure this defendant's liability. Beyond all question, the nature of an automobile gives warning of probable danger if its construction is defective. This automobile was designed to go fifty miles an hour. Unless its wheels were sound and strong, injury was almost certain. It was as much a thing of danger as a defective engine for a railroad. The defendant knew the danger. It knew also that the car would be used by persons other than the buyer. This was apparent from its size; there were seats for three persons. It was apparent also from the fact that the buyer was a dealer in cars, who bought to resell. The maker of this car supplied it for the use of purchasers from the dealer... . The dealer was indeed the one person of whom it might be said with some approach to certainty that by him the car would not be used. Yet the defendant would have us say that he was the one person whom it was under a legal duty to protect. The law does not lead us to so inconsequent a conclusion. Precedents drawn from the days of travel by stage coach do not fit the conditions of travel to-day. The principle that the danger must be imminent does not change, but the things subject to the principle do change. They are whatever the needs of life in a developing civilization require them to be. ...

"We think the defendant was not absolved from a duty of inspection because it bought the wheels from a reputable manufacturer. It was not merely a dealer in automobiles. It was a manufacturer of automobiles. It was responsible for the finished product. It was not at liberty to put the finished product on the market without subjecting the component parts to ordinary and simple tests... The obligation to inspect must vary with the nature of the thing to be inspected. The more probable the danger, the greater the need of caution. ...

"The judgment should be affirmed with costs."

UNDERSTANDING V

CHANGE IN OUR LEGAL SYSTEM CAN BE CLASSIFIED INTO SEVERAL DIFFERENT BASIC TYPES.

A. *Explanation of Understanding V*

Having looked at how changes in law may be influenced and who actually makes changes in law, Understanding V turns to forms that legal changes can take. People usually think of change in law as revision of the system of do's and don'ts that regulate the conduct of citizens. But such change in regulation of private conduct is only one of several kinds of legal change that can occur. Basic types of changes that can be made in a legal system might be classified as follows:

- changes in rules regulating people's everyday conduct
- changes in the organization and structure of government
- changes in basic constitutional law structuring the powers of government and officials

B. *Teaching Understanding V*

OBJECTIVES

- The student can collect pictures and news articles demonstrating the three basic types of changes that have been made in a legal system.
- Given a problem facing society, the student can explain which of the three basic types of changes in a legal system would be most effective in reducing the tensions caused by the problem; which would be most useful in actually solving the problem.

QUESTIONS TO REACH UNDERSTANDING

- In what ways does each type of legal change differ from the others?
- Why is more than one type of legal change necessary?

Module 3

DETAILED DESCRIPTION OF STRATEGIES

Student Projects

Have students who are developing individual projects during the course of this module decide what kinds of legal change would be necessary to bring about change in the problem selected for study.

Class Activities

Each of the following numbered sets of activities is related to developing student awareness of the three kinds of legal change.

1. Change in rules relating to everyday conduct of citizens.

   (1a) Have students examine a change in a law directly relating to citizens. Discussion should center on these questions:

   - Precisely what was changed? (A law regulating everyday activities)
   - Why was the change considered necessary?
   - How was the change made?

   (1b) As an alternative to the above strategy, assign to student groups several different examples of changes in laws which directly regulate everyday activities of citizens. Have each group use the three questions above analyzing

DISCUSSION OF STRATEGIES AND RESOURCES

1. Change in rules regulating people's everyday conduct. When one thinks about legal change, what probably first comes to mind is changing rules for citizens that say "you can or cannot do this or that." For example, a person is elegible to vote when he is 18 years of age, or one cannot use DDT. Changing the rules regulating activities of private citizens is only one of several kinds of possible legal change.

2. Change in the organization or structure of government. Legal rules are not self-applying or self-enforcing. Application and enforcement are jobs of government and legal officials. Frequently, legal change is needed to create or organize the legal structure or the legal officials so they can do a more effective job of applying laws. When law is not performing properly, the need for change might not be for changes in the legal rules themselves, but for changes in the organization of officials and in the processes by which sound legal rules are to be carried out. For example, welfare laws may make sense, but bureaucratic structure and processes for their application may be so clumsy as to make the welfare system inefficient. Welfare families in need of temporary housing might be put up at taxpayer expense at an exclusive hotel rather than at more appropriate accommodations. Criminal laws may be sound, and criminal prosecutions a sound way to apply them, but if there simply are too few courts and judges to handle the case load, there is a drastic need for legal change.

3. Change in the basic constitutional law limiting the powers of governments and officials. Legal

DETAILED DESCRIPTION OF STRATEGIES

the specific change assigned to it. In a followup discussion, pose an additional question: What do the various changes have in common? To the extent possible, students should work out for themselves the nature of this type of change (change in the rules regulating people's everyday conduct).

Suggested examples of legal change for use with both of the preceding strategies are found on pages 66 to 68.

2. Change in the organization or structure of government

(2a) Have the class examine a change (or a proposed change) in the organization or structure of government.

(2b) As an alternative strategy, divide several examples of change (or proposed change) in the organization or structure of government among several groups of students. Students in each group should analyze the change illustrated or suggested by one law or newspaper article supplied to the group. Each group should determine the exact nature of the change or proposed change and the reasons for such change. In a followup discussion, students should decide why structural or organizational change was selected instead of a change in laws directly regulating citizens.

DISCUSSION OF STRATEGIES AND RESOURCES

basic form of change considered is change in constitutional law. In a legal system, constitutional law serves the functions of protecting basic rights and interests of the governed from potential oppression by the power of the government and of defining the duties of an official.

Most change in constitutional law results from judicial reinterpretation of the Constitution and application of the Constitution to new circumstances. However, occasionally we see fit to change the Constitution by amending basic provisions limiting the powers of governments and legal officials.

For each of the strategies used to evaluate change, the following questions are appropriate:

- Exactly what was changed?
- How was the change made?
- Why is this type of change considered necessary?
- Why wouldn't another type of change be appropriate?

Suggested examples of legal change for use with the two preceding strategies are listed on page 68.

3. Change in the basic constitutional law limiting the powers of governments and officials.

(3a) Have the class examine a constitutional change or a proposed constitutional change. Students should answer these questions.

- Exactly what was (is to be) changed?
- How is this type of change brought about?
- Why must this type of change be used?

RESOURCES

1. Change in Rules Regulating Everyday Conduct of Citizens.

McKinney's Consolidated Laws of New York. Vol. 62a "Vehicle and Traffic Law" (1970)

Section 1180. Basic rule and maximum limits

"(b) Except when a special hazard exists that requires lower speed for compliance with subdivision (a) of this section, or when maximum speed limits have been established as hereinafter authorized, no person shall drive a vehicle at a speed in excess of fifty-five miles per hour. (Previously 50 mph.)"

Executive Order No. 11497, Code of Federal Regulations, Vol. 32 (1969)

AMENDING THE SELECTIVE SERVICE REGULATIONS TO PRESCRIBE RANDOM SELECTION

Section 1631d

"By virtue of the authority vested in me by the Military Selective Service Act of 1967 (62 Stat. 604, as amended), I hereby prescribe the following amendments of the Selective Service Regulations . . .

Section 1631.5, Calls by the Director of Selective Service, is amended by adding a new paragraph (d), to read as follows:

"'(d) The Director of Selective Service shall establish a random selection sequence for induction. Such random selection sequence shall be determined as the President may direct, and shall be applied nationwide. The first sequence shall determine the order of selection of registrants (other than delinquents or volunteers) who prior to January 1, 1970, shall have attained their nineteenth year of age but not their twenty-sixth. New random selection sequences shall be established, in a similar manner, for registrants who attain their nineteenth year of age on or after January 1, 1970. The random sequence number determined for any registrant shall apply to him so long as he remains subject to random selection. A random sequence number established for a registrant shall be equivalent, for purposes of selection, to the same random sequence number established for other registrants in other drawings.' . . .

RICHARD NIXON

THE WHITE HOUSE,
November 26, 1969."

Module 3

Voting Rights Act of 1965, United States Code, Title 42, "public Health and Welfare"

Section 1971 (a) 2 (C) and 1971 (c)

"No person acting under color of law shall—

"(C) employ any literacy test as a qualification for voting in any election unless (i) such test is administered to each individual and is conducted wholly in writing, . . .

"(c) Whenever any person has engaged or there are reasonable grounds to believe that any person is about to engage in any act or practice which would deprive any other person of any right or privilege secured by subsection (a) or (b) of this section, the Attorney General may institute for the United States, or in the name of the United States a civil action or other proper proceeding for preventive relief, including an application for a permanent or temporary injunction, restraining order, or other order. If in any such proceeding literacy is a relevant fact there shall be a rebuttable presumption that any person who has not been adjudged an incompetent and who has completed the sixth grade in a public school in, or a private school accredited by, any State or territory, the District of Columbia, or the Commonwealth or Puerto Rico where instruction is carried on predominantly in the English language, possesses sufficient literacy, comprehension, and intelligence to vote in any election. . . ."

Comprehensive Drug Abuse Prevention and Control Act of 1970. PUBLIC LAW 91-513 in Vol. 84 United States Statues at Large, p. 1264 (1970)

PENALTY FOR SIMPLE POSSESSION; CONDITIONAL DISCHARGE AND EXPUNGING OF RECORDS FOR FIRST OFFENSE

Section 404 (b)(1)

"(b)(1) If any person who has not previously been convicted of violating subsection (a) of this section (possession of a "controlled substance," e.g., marihuana), any other provision of this title or title III, or any other law of the United States relating to narcotic drugs, marihuana, or depressant or stimulant substances, is found guilty of a violation of subsection (a) of this section after trial or upon a plea of guilty, the court may, without entering a judgment of guilty and with the consent of such person, defer further proceedings and place him on probation upon such reasonable conditions as it may require and for such period, not to exceed one year, as the court may prescribe. Upon violation of a condition of the probation, the court may enter an adjudication of guilt and proceed as otherwise provided. The court may, in its discretion, dismiss the proceedings against such person and discharge him from probation before the expiration of the maximum period prescribed for such person's probation. If during the period of his probation such person does not violate any

of the conditions of the probation, then upon expiration of such period the court shall discharge such person and dismiss the proceedings against him. Discharge and dismissal under this subsection shall be without court adjudication of guilt, but a nonpublic record thereof shall be retained by the Department of Justice solely for the purpose of use by the courts in determining whether or not, in subsequent proceedings, such person qualifies under this subsection. Such discharge or dismissal shall not be deemed a conviction for purposes of disqualifications or disabilities imposed by law upon conviction of a crime (including the penalties prescribed under this part for second or subsequent convictions) or for any other purpose. Discharge and dismissal under this section may occur only once with respect to any person."

2. Change in the Organization or Structure of Government.

"Air Quality Act 1967," United States Code, Title 42, "Public Health and Welfare"

Sections 1857c-1 and 1857e

See resource section for Understanding II, Module II.

Nixon, Richard, State of the Union Message, New York Times, Jan. 23, 1971, p. 12

(Contains proposal for restructuring of the executive branch of the federal government)

New York Times, Jan. 21, 1971, p. 1, col. 5

(Information on recent efforts before Congress to redesign the seniority system and the filibuster)

New York Times, Aug. 11, 1970, p. 24, col. 4

(Proposal by Chief Justice Warren Berger in a speech to the American Bar Association urging that the judicial system of the United States be overhauled)

3. Change In the Basic Constitutional Law Limiting the Powers of Governments and Officials

Proposed Constitutional Amendment

Section 1. [Equal rights for men and women]

Equality of rights under the law shall not be denied or abridged by the United States or by any State on account of sex.

Section 2. [Enforcement of article]

The Congress shall have the power to enforce, by appropriate legislation, the provisions of this article.

Section 3. [Effective date]

This amendment shall take effect two years after the date of ratification.

U.S. Constitution, Amendment XXVI (Lowers voting age to 18 in all elections)

U.S. Constitution Amendment XXIV (Prohibits poll taxes for voting in Federal elections)

U.S. Constitution, Amendment XXII (Limits President to two terms)

UNDERSTANDING VI

BECAUSE ALL CHANGE IN LAW IS NOT NECESSARILY SOUND CHANGE, CERTAIN PROCESSES EXIST TO SCREEN CHANGE IN OUR LEGAL SYSTEM.

A. *Explanation of Understanding VI*

This understanding considers whether all legal change is necessarily good change. Our society needs many legal changes. Young people today may be more concerned with change than ever before; those who are enthusiastic about it assume that all legal change equals progress. There is no reason to expect that all legal change will be good change. Hitler's Germany arose out of change, much of which was legal change. Laws are social instruments operated by men; they can be misused like any other instrument.

As previously mentioned, legal change can be made through constitutional amendment, through legislative enactment, through court decision, or through administrative action. A good legal system will attempt to minimize unsound legal change by the design of the processes through which change occurs in each of these ways within the legal system. Presence of the characteristics of the model change process in the system's processes for change (1) may result in processes for change that are more satisfactory than processes lacking these characteristics, and (2) may result in effective screening in the process of making change.

B. *Teaching Understanding VI*

OBJECTIVES

- Given an example of change in an institution, the student can assess the soundness of the change and relate this assessment to the processes by which the change was brought about.
- Given evidence of an unsound change in an institution, the student can suggest viable ways in which the change process can be altered, so that unsatisfactory results will be prevented in the future.

QUESTIONS TO REACH UNDERSTANDING

- How does our legal system provide processes for the screening of change?
- Why does our legal system provide processes for the screening of change?

DETAILED DESCRIPTION OF STRATEGIES

1. Legal change does not necessarily equal progress.

(1a) Initiate the first strategy with a preliminary discussion centering on this question: What are some examples of past laws and legal changes that history has subsequently judged to have been undesirable? Suggest to students that they draw on United States and European history for examples. Compile a list on the chalkboard.

Divide the class into several teams. Have each team choose for further investigation one item from the previously compiled list of legal changes which history has determined to be undesirable. General questions which may guide each team include:

- What circumstances led to the adoption of the legal change?
- Why was the legal change thought to have been sound at the time it was instituted?
- For what reasons has history apparently judged the legal change to be undesirable?

In large group discussion or fishbowl format, focus on the common elements among the various examples which the teams

DISCUSSION OF STRATEGIES AND RESOURCES

1. Legal change does not necessarily equal progress. History is filled with examples of laws that might be termed antiprogressive. Examination of selected laws in history may dispel notions that legal change necessarily means social progress.

In choosing examples of current unsound legal changes, a person is indicating to some degree his personal opinion on contemporary issues. However, by discussing a number of legal changes that have occurred in the past few years, one can imagine that some of these will be evaluated in time as contributing to progress in America while others will not.

2. Process for making legal change may serve to screen out some unwise legal changes. Constitutional amendment. Before the basic constitutional law can be amended, there must be special deliberation and an interest in change by an unusually large majority of the people. Constitutional law serves to protect the governed by establishing limits on the powers of the government. The cumbersome process by which this basic limiting law can be changed helps protect against changes in the underlying principles of government by the majority of the moment.

Legislative enactment. The theory on which the process used by legislators in making laws is based is that the people's representatives will take time to consider the merits of a proposal before making the proposal into law. In actual practice, the process often does not operate as intended.

investigated. Through the discussion, work toward the understanding that legal change is not necessarily synonomous with progress.

(1b) Have students suggest some current examples of legal change that history may or may not judge to be undesirable in the future.

Divide the class into teams; each team may select one of the suggested legal changes for study. These questions will serve to guide the considerations of each team:

- What circumstances have led to the request for the legal change?
- What are some arguments for and against the legal change?
- How will history probably judge this legal change? Explain.

Views can again be exchanged in a fish-bowl arrangement. Discussion should lead to the understanding that the desirability of some contemporary legal changes is, at best, debatable, without the long view of history.

2. Processes for making legal change may serve to screen unwise legal changes.

(2a) Divide the class into four teams. Direct each team to certain passages in the

Provision for bicameral legislatures is also intended to serve as a filter to discourage making of unwise statutory legal changes.

Judicial decision. The formalities of courtroom procedure serve as a means of screening judge-made legal changes. Provision for appeal and review of lower court decisions by higher courts serves as an additional check.

Administrative action. Administrative rule-making and adjudication include many of the same formal checks as the legislative and judicial processes. Also, as with the judicial process, administrative proceedings are subject to court appeal and review.

With respect to strategy 1a, in addition to the more striking examples like early New England laws instituted to fight witchcraft, some students may suggest examples of local ordinances currently in force, that have come to be considered as rather silly. These also can be used in developing the idea that legal change does not necessarily equal progress.

The completed list might include topics such as these, as well as additional local examples:

- judicial establishment of the doctrine of "separate but equal" for different races
- legal prohibition of sale, manufacture, or use of alcoholic beverages
- laws of Nazi Germany condoning slaughter of Jewish population
- National Origins Quota System for immigration
- laws prohibiting witchcraft
- judicial determination that under the laws of this land black Americans were not "citizens"

DETAILED DESCRIPTION OF STRATEGIES

United States Constitution, the New York State Constitution, and the *United States Code* as indicated below. Do not, however, inform students that the material assigned to each team relates to processes for legal change which may serve screening functions.

Team	Assignment
1:	New York Constitution, Article IXX United States Constitution, Article V
2:	New York Constitution, Article III, "Legislature," Section 14, "Manner of passing bills." United States Constitution, Article I
3:	New York Constitution, Article VI, "Judiciary," Section 5, "Power of Appelate Court upon appeal."
4:	Administrative Procedure Act in *United States Code*, Title 5, "Right of Review, Government Organization and Employees," Sections 701-706.

Each team may be guided in the consideration of its documents by such questions as:

- What is the source of the assigned passage?
- To what broader matters are the assigned passages related?

DISCUSSION OF STRATEGIES AND RESOURCES

Possible examples of legal change, for strategy 1b, include:

- legalizing abortion
- allowing wiretaps without judicial supervision in some cases
- increasing severity of drug laws in some places
- removing prayers from the schools
- affirming a state antibussing law to be unconstitutional
- abolishing capital punishment
- reinstituting capital punishment

For strategy 2a, teachers should keep in mind the purpose of each document assigned as follows:

- Team 1 - Screening of constitutional change
- Team 2 - Screening of legislative change
- Team 3 - Screening of judicial change
- Team 4 - Screening of administrative change

Questions to raise in considering the documents include:

- What is the source of the assigned passage?
- To what broader matters are the assigned passages related?
- What is the nature of the processes implied by the text?
- How does the process in each passage relate to legal change?
- What could be the possible impact of this process on legal change?

RESOURCES*

A. Past Legal Change Which History Has Judged Undesirable

Duncan, J.A. *The strangest cases on record.* Chicago. Reilly & Lee. 1940.

A potpourri of anecdotes about legal oddities. Chapter 11, "Ludicrous Law," makes the point that not all legal change is sound. Perhaps the most absurd legal change reported by the author was a Kansas law which changed the value of "pi" from 3.1416 to an even 3.

Fox, S.J. *Science and justice: the Massachusetts Witchcraft trials.* Baltimore. John Hopkins Press. 1968.

A study of the law-science relationship during the period of the famous witch trials. The author suggests that there exists a discomforting similarity between the injustice of that era and of the present because law is often innocent of the insights of science.

"Dred Scott Decision," Scott v. Sandford, 19 U.S. Reports, 393 (1887).

(Determined that under the laws of this land black Americans were not citizens.)

An edited version of this decision is contained in:

Adler, M.J., ed. *The Negro in American history.* Vol. II. Chicago. Encyclopedia Britannica Corp. 1969. pp. 414-124.

Commager, H.S., ed. *Documents of American history,* 8th ed. New York. Appleton-Century-Crofts. 1969. Vol. I, Doc. No. 185, pp. 339-345.

Hammond, H.E. *We hold these truths.* Bronxville. Cambridge. 1964. pp. 184-195.

James, L.F. *The Supreme Court in American life.* Fairlawn, N.J. Scott, Foresman and Company. 1964. pp. 50ff.

*Direct quotations from statutes are indicated by the use of quotation marks. Other statements are summaries or paraphrases of the statute listed.

Starr, Isidore, Todd, Lewis, & Curti, Merle. *Living American documents.* New York. Harcourt. 1961. pp. 166-173.

Swisher, C.B. *Historic decisions of the Supreme Court.* Princeton, N.J. Van Nostrand Company. pp. 53-60.

Plessy v. Ferguson, 163 U.S. Reports, 537, (1896).

(Established the doctrine of "separate but equal" for different races.)

See resource section for Understanding IV, Module I.

United States Constitution, Amendment XVIII.

(Prohibited sale, manufacture, or use of alcoholic beverages.)

Kozon, Eugen. *Theory and practice of Hell: the German concentration camps and the system behind them.* Tr. Heinz Norden. New York. Farrar Straus. 1950.

Laws of Nazi Germany condoned slaughter of Jewish population.

National Origins Quota System, United States Code, Title 8 "Immigration," Section 1151, 1964 ed. Repealed 1965. Public Law 89-236 in Vol. 79, U.S. Statutes at Large, p. 11.

(Provided for a national origins quota system for immigration which aimed at maintaining the existing ethnic and racial composition of the country.)

"IMMIGRATION

"PART I. QUOTA SYSTEM - SECTION 1151. Annual Quota

"(a) Numerical limitation; Chinese quota.

"The annual quota of any quota shall be one sixth of 1 per centum of the number of inhabitants in the continental United States in 1920, which number, except for the purpose of computing quotas for quota areas within the Asia-Pacific triangle, shall be the same number heretofore determined under the provisions of section 11 of the Immigration Act of 1924, attributable by national origin to such quota area: *Provided*, That the quota existing for Chinese persons prior to June 27, 1952, shall be continued, and, except as otherwise provided in section 1152 (e) of this title, the minimum quota for any quota area shall be one hundred.

"(b) Determination of annual quota; report to President; effective date of quotas.

"The determination of the annual quota of any quota area shall be made by the Secretary of State, the Secretary of Commerce, and the Attorney General, jointly. Such officials shall, jointly, report to the President the quota of each quota area, and the President shall proclaim and make known the quotas so reported. ...

"PROCLAMATION NO. 3298. IMMIGRATION QUOTAS.

"NOW, THEREFORE, I, DWIGHT D. EISENHOWER, President of the United States of America, acting under and by virtue of the authority vested in me by the aforesaid Act of Congress, do hereby proclaim and make known that the annual quotas of the quota areas hereinafter designated have been determined in accordance with the law to be, and shall be, as follows:

QUOTA AREA*	
"Austria	1,405
Belgium	1,297
China	100
Czechoslovakia	2,859
Denmark	1,175
France	3,069
Germany	25,814
Great Britain and Northern Ireland	65,361
India	100
Ireland (Eire)	17,756
Italy	5,666
Japan	185
Netherlands	3,136
Nigeria	149
Norway	2,364
Poland	6,488
Spain	250
Sweden	3,295
Switzerland	1,698
Union of Soviet Socialist Republics	2,697"

*Selected countries only listed for purposes of this study.

Module 3

B. Debatable Contemporary Legal Change

New York Penal Law, Section 125.05 "Homicide, Abortion and Related Offences..." (1970-71 Supplement)

(Legalizes abortion.) -- See resource section for Understanding IV of Module III, (p. 47).

Omnibus Crime Control and Safe Streets Act of 1968, Section 2511 (3), United States Code, Title 18, "Crimes and Criminal Procedure," (Supplement IV, 1969).

Section 2511. Interception and disclosure of wire or oral communications prohibited

"(1) Except as otherwise specifically provided in this chapter any person who—
(a) willfully intercepts, endeavors to intercept, or procures any other person to intercept or endeavor to intercept, any wire or oral communication;
(b) willfully uses, endeavors to use, or procures any other person to use or endeavor to use any electronic, mechanical, or other device to intercept any oral communication...
shall be fined not more than $10,000 or imprisoned not more than five years, or both. ...

"(3) Nothing contained in this chapter or in section 605 of the Communications Act of 1934 (48 Stat. 1143; 47 U.S.C. 605) shall limit the constitutional power of the President to take such measures as he deems necessary to protect the Nation against actual or potential attack or other hostile acts of a foreign power, to obtain foreign intelligence information deemed essential to the security of the United States, or to protect national security information against foreign intelligence activities. Nor shall anything contained in this chapter be deemed to limit the constitutional power of the President to take such measures as he deems necessary to protect the United States against the overthrow of the Government by force or other unlawful means, or against any other clear and present danger to the structure or existence of the Government. The contents of any wire or oral communication intercepted by authority of the President in the exercise of the foregoing powers may be received in evidence in any trial hearing, or other proceeding only where such interception was reasonable, and shall not be otherwise used or disclosed except as is necessary to implement that power."

State v. Siirila, Minnesota Reports, (1971).

Reflects increasing severity of drug laws in some places. (See resource section for Understanding IV, of Module III, p. 55).

See also, *New York Times*, February 7, 1971.

Module 3

Comprehensive Drug Abuse Prevention and Control Act of 1970, Section 404 (b) (1), Public Law 91-513 in Vol., 84 United States Statutes at Large, p. 1236. (1970).

Reflects decreasing severity of drug laws in some places; specifically a reduction of Federal penalty for possession of marijuana. See resource section for Understanding V of Module III.

Engel v. Vitale, 370 U.S. Reports, 421, (1962).

An edited version is found in:

James, L.F. *The Supreme Court in American life.* Fairlawn, N.J. Scott, Foresman and Company pp. 150ff.

National Council for the Social Studies. *Judgment series.* "Case Study No. 1: Bible Reading and Prayer in Public Schools." Washington. The Council. 1966. (Available from Scholastic.)

Oregon State Bar Association. *Liberty and the law.* Unit 7: "Church, State, and Education." Englewood Cliffs, N.J. Prentice Hall. 1968.

Summers, R.S., Campbell, A.B., and Bozzone, J.P. *Justice and order through law.* Lexington, Mass. Ginn. 1974. Unit IV, pp. 43-44.

Tresolini, Rocco. *These liberties: case studies in civil rights.* New York. Lippincott Company. pp. 209-217.

School District of Abington Township, Pennsylvania v. Schempp, 374 U.S. Reports, 203, (1963).

An edited version of this decision is contained in:

Commager, H.S., ed. *Documents of American history,* 8th ed. New York. Appleton-Century-Crofts. Vol. II, Doc. No. 652. pp. 699-700.

James, L.F. *The Supreme Court in American life.* Fairlawn, N.J. Scott Foresman and Company. 1964.

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North Carolina State Board of Education v. Swann, 402 U.S. Reports, 43 (1971).

"MR. CHIEF JUSTICE BERGER delivered the opinion of the Court.

"This case is here on direct appeal...from the judgment of a three-judge court in the United States District Court for the Western District of North Carolina. The District Court declared unconstitutional a portion of the North Carolina General Statutes known as the Anti-Busing Law, and granted an injunction against its enforcement.

"...the District Court specifically directed that the school board consider altering attendance areas, pairing or consolidation of schools, bus transportation of students, and any other method which would effectuate a racially unitary system. That litigation was actively prosecuted. The board submitted a series of proposals, all rejected by the District Court as inadequate. In the midst of this litigation over the remedy to implement the District Court's order, the North Carolina Legislature enacted the anti-busing bill... .

"...school authorities have wide discretion in formulating school policy, and that as a matter of educational policy school authorities may well conclude that some kind of racial balance in the schools is desirable quite apart from any constitutional requirements. However, if a state-imposed limitation on a school authority's discretion operates to inhibit or obstruct the operation of a unitary school system or impede the disestablishing of a dual school system, it must fall; state policy must give way when it operates to hinder vindication of federal constitutional guarantees.

"The legislation before us flatly forbids assignment of any student on account of race or for the purpose of creating a racial balance or ratio in the schools. The prohibition is absolute, and it would inescapably operate to obstruct the remedies granted by the District

Court in the *Swann* case. But more important the statute exploits an apparently neutral form to control school assignment plans by directing that they be 'color blind'; that requirement against the background of segregation, would render illusory the promise of *Brown v. Board of Education*, 347 U.S. 483 (1954). Just as the race of students must be considered in determining whether a constitutional violation has occurred, so also must race be considered in formulating a remedy. To forbid, at this stage, all assignments made on the basis of race would deprive school authorities of the one tool absolutely essential to fulfillment of their constitutional obligation to eliminate existing dual school systems. ...

"We likewise conclude that an absolute prohibition against transportation of students assigned on the basis of race, 'or for the purpose of creating a balance or ratio,' will similarly hamper the ability of local authorities to effectively remedy constitutional violations. As noted in *Swann, supra*...bus transportation has long been an integral part of all public educational systems, and it is unlikely that a truly effective remedy could be devised without continued reliance upon it.

"The remainder of the order of the District Court is affirmed... .

"Affirmed."

McKinney's Consolidated Laws of New York. Vol. 39, "Penal Law." (1965).

Section 1045. Punishment for murder in first degree; plea of guilty thereto; sentence of life imprisonment by court

"1. Murder in the first degree is punishable by life imprisonment unless the death sentence is imposed as provided by section ten hundred forty-five-a.

"2. When the court and the district attorney consent, a defendant indicted for murder in the first degree may plead guilty to murder in the first degree with a sentence of life imprisonment, in which case the court shall sentence him accordingly. ...

"4. When the conviction was for murder in the first degree committed from a deliberate and premeditated design to effect the death of the person killed, or of another or committed without a design to effect death, by a person engaged in the commission of, or in an attempt to commit a felony, either upon or affecting the person killed or otherwise, the court shall conduct a proceeding pursuant to section ten hundred forty-five-a to determine whether

defendant should be sentenced to life imprisonment, or to death if it is satisfied that either (a) the victim was a peace officer who was killed in the course of performing his official duties, or (b) at the time of the commission of the crime, the defendant was confined in a state prison or was otherwise in custody upon a sentence for the term of his natural life or upon a sentence commuted to one of natural life, or upon a sentence for an indeterminate term the minimum of which was at least fifteen years and the maximum of which was natural life, or having escaped from such confinement or custody the defendant was in immediate flight thereform. Provided that the court shall discharge the jury and shall sentence defendant to life imprisonment if it is satisfied that the defendant was under eighteen years of age at the time of the commission of the crime, or that the sentence of death is not warranted because of substantial mitigating circumstances."

Delaware Code Annotated, Title II, "Crimes and Criminal Procedures." (Supplement 1968).

Section 3909. Infliction of capital punishment

"(a) Punishment of death shall, in all cases, be inflicted by hanging by the neck.

"(b) Such punishment shall be inflicted within the prison or workhouse enclosures in the county where the criminal is convicted, except when otherwise ordered, and as privately as the nature of the case will permit, but in the presence of a jury of twelve citizens of the county, to be summoned by the governing board or authority of the prison in which the execution is to occur to witness such execution, and of such other persons as the board or authority deems proper to invite. Not over thirty persons in all shall be present at such execution. In addition to the above number, newspaper representatives having proper credentials from their paper, approved by the President Judge of the Superior Court, Resident Judge, Attorney General or his deputy, shall be admitted.

"(c) No persons, other than those specifically named in this section, shall be permitted to view the executing justice or to view the result of the executing justice until the person executed has been properly prepared for burial. ..."

Module 3

2. Processes for Making Legal Change May Serve to Screen Unwise Legal Change

A. Screening of Constitutional Change

United States Constitution, Article V.

Text available in most American history textbooks, as well as in various annual almanacs.

New York State Constitution, Article XIX "Amendments to Constitution."

Section 1 - Amendments to constitution; how proposed, voted upon and ratified; failure of attorney-general to render opinion not to affect validity
Section 2 - Future constitutional conventions; how called; election of delegates; compensation; quorum; submission of amendments; officers; employees; rules; vacancies
Section 3 - Amendments simultaneously submitted by convention and legislature

(Teachers may wish to reproduce the text of the sections, excluding the notes which follow in each case.)

Most schools have copies of the *New York State Legislative Manual* deposited in the library or in the principals office. The administrator may request a copy without charge from the Office of the Secretary of State, 162 Washington Avenue, Albany 12210. In some cases, State legislators have provided copies of this publication, and of the *New York State Redbook*, for school use. Both are revised annually, and both carry the complete text of the State Constitution.

B. Screening of Legislative Change

United States Constitution, Article I.

New York State Constitution, Article III, "Legislature," Section 14.

C. Screening of Judicial Change

New York State Constitution, Article VI. "Judiciary," Section 5.

D. Screening of Administrative Change

"Administrative Procedure Act" in United States Code, Title 5, "Right of Review, Government Organization and Employees."

Section 701. Application; definitions

"(a) This chapter applies, according to the provisions thereof, except to the extent that—
(1) statutes preclude judicial review; or
(2) agency action is committed to agency discretion by law.

"(b) For the purpose of this chapter—
(1) 'agency' means each authority of the Government of the United States, whether or not it is within or subject to review by another agency, but does not include—
(A) the Congress;
(B) the courts of the United States;
(C) the governments of the territories;
(D) the government of the District of Columbia;
(E) agencies composed of representatives of the parties or of representatives of organizations of the parties to the disputes determined by them;
(F) courts martial and military commissions;
(G) military authority exercised in the field in time of war or in occupied territory. ...

Section 702. Right of review

"A person suffering legal wrong because of agency action, or adversely affected or aggrieved by agency action within the meaning of a relevant statute, is entitled to judicial review thereof.

Section 703. Form and venue of proceeding

"The form of proceeding for judicial review is the special statutory review proceeding relevant to the subject matter in a court specified by statute or, in the absence or inadequacy thereof, any applicable form of legal action, including actions for declaratory judgments or writs of prohibiting or mandatory injunction or habeas corpus, in a court of competent jurisdiction. Except to the extent that prior, adequate, and exclusive opportunity for judicial review is provided by law, agency action is subject to judicial review in civil or criminal proceedings for judicial enforcement. "

Section 704. Actions reviewable

"Agency action made reviewable by statute and final agency action for which there is no other adequate remedy in a court are subject to judicial review. A preliminary, procedural, or intermediate agency action or ruling not directly reviewable is subject to review on the review of the final agency action. Except as otherwise expressly required by statute, agency action otherwise final is final for the purposes of this section whether or not there has been presented or determined an application for a declaratory order, for any form of reconsideration, or, unless the agency otherwise requires by rule and provides that the action meanwhile is inoperative, for an appeal to superior agency authority.

Section 705. Relief pending review

"When an agency finds that justice so requires, it may postpone the effective date of action taken by it, pending judicial review. On such conditions as may be required and to the extent necessary to prevent irreparable injury, the reviewing court, including the court to which a case may be taken on appeal from or on application for certiorari or other writ to a reviewing court, may issue all necessary and appropriate process to postpone the effective date of an agency action or to preserve status or rights pending conclusion of the review proceedings.

Section 706. Scope of review

"To the extent necessary to decision and when presented, the reviewing court shall decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of an agency action. The reviewing court shall—

(1) compel agency action unlawfully withheld or unreasonably delayed; and
(2) hold unlawful and set aside agency action, findings, and conclusions found to be—
    (A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;
    (B) contrary to constitutional right, power, privilege, or immunity;
    (C) in excess of statutory jurisdiction, authority, or limitations or short of statutory right
    (D) without observance of procedure required by law;
    (E) unsupported by substantial evidence in a case subject to sections 556 and 557 of this title or otherwise reviewed on the record of an agency hearing provided by statute;... ."

UNDERSTANDING VII

SEVERAL OBSTACLES MAY HINDER CHANGE THROUGH OUR LEGAL SYSTEM

A. *Explanation of Understanding VII*

Many responsible people speak of change through the system. Change through the legal system is not a simple matter because several obstacles may stand in the way of change:

- lack of popular support of nonlegal values
- official interest in preserving the status quo
- interest group pressure against change
- politically explosive issues
- expense and inconvenience
- failure to carry out changes that have officially been made

Some of these obstacles relate to the complexity of the problems of making social change. Others relate to defects in the operation of the legal system and how the legal system itself provides for change.

B. *Teaching Understanding VII*

OBJECTIVES

- The student can generate data illustrating the various obstacles to change through the legal system by collecting cartoons and news pictures illustrating each of the types of obstacles proposed.
- Given a real life situation, or one portrayed in a television drama such as All In The Family, the student can analyze the type of obstacle which is impeding change, and can suggest ways that the obstacle can be circumvented.

QUESTIONS TO REACH UNDERSTANDING

- What are some important obstacles to change through our legal system?; how do they limit change?
- How do these obstacles themselves demonstrate need for legal change?

Module 3

DETAILED DESCRIPTION OF STRATEGIES

Student Projects

Students working on continuing individual projects should explore this final matter of obstacles hindering change effected through one legal system before concluding their projects. (Strategies directed toward individual student projects in previous understandings of this module have dealt with these phases of individual projects: (a) identifying a social change and a resulting need for legal change, (b) listing various possible methods for bringing about change in the selected problem, (c) selecting the most efficacious method for inducing change, and (d) exchanging ideas and comments with other students regarding individual projects.) Each student working on an individual project should now be directed to identify various obstacles that desirable legal change might encounter. With the conclusion of individual projects, each student may make a presentation to the class, which may then discuss the findings.

Class Activities

(a) Using a sampling of content such as that suggested below have the class discuss the various obstacles to change illustrated by each of the various situations. As an alternative strategy, the class may be divided into six groups.

DISCUSSION OF STRATEGIES AND RESOURCES

1. Lack of popular support of nonlegal values. Laws change in response to needs of society that are felt by the people or their government officials. It is quite natural in a democracy that the need for some changes will be perceived at first by a few members of society, then by more, and finally by a sufficiently influential group to result in legal change. At an early state in the evolution of a needed legal change, an obstacle to that change will be public support. Dramatic examples of this have occurred in the realm of civil rights and environment protection. Early crusaders for Negro civil rights, disengagement from war in southeast Asia, and environmental protection were viewed as radicals before there was popular acceptance of their causes.

2. Official interest in preserving the status quo. Another obstacle to effective legal change may be interest by legal officials in preserving the status quo. There may be in some cases a conflict of interest between a leglislator's service to the people he represents and the preservation of his own position.

The idea of representative democracy may support reapportionment of legislative districts, but interest of legislators in staying in office may result in the legislature ignoring reapportionment. Interest in having a responsive lawmaking process may require reform of certain legislative processes (seniority committee system or filibuster, for example). Interest in preserving individual legislative power, however, may result in legislators ignoring the need for reform.

DETAILED DESCRIPTION OF STRATEGIES

(b) Have each group gather news coverage and/or explore available literature on one of the following kinds of obstacles to change through the legal system. For most of the obstacles enumerated below there are several suggested considerations or examples from which one group investigating that obstacle can choose. The activity can be concluded with an exchange of information and conclusions.

1. The people may fail to perceive a need for change.

   - Compare the majority and the dissenting opinions in Plessy v. Ferguson in order to see that, while in 1970 a majority of citizens probably would agree with the dissenting opinion, the climate of opinion of the 1890's supported the majority of the court.
   - Compare the lackadaisical approach to pollution control prior to the 1960's with the great interest of today.

2. Legal officials may have a personal interest in preserving the status quo.

   - Consider the problem of reapportionment. Reapportionment meant eliminating some legislative

DISCUSSION OF STRATEGIES AND RESOURCES

3. Interest group pressure against change. The lobby is an important part of American government. Interest groups of any persuasion may try to inform legislators and to influence them concerning particular legislation. This process gives people a voice in government and helps to inform the government.

The alliance between legislators and particular interest groups can become an obstacle to progressive change. Legislators may become financially dependent upon the contributions of particular interest groups, although lobbying does not always imply payment for legislative action. The legislator's position on particular matters of change may come to reflect the interests of a lobby more than the interests of the constituents he represents. Needed change may thus be prevented.

4. Politically explosive issues. The political dynamics of certain subject matter may prove an obstacle to legal change. Some areas that need legal reform are subject areas that people "just don't like to talk about." For example, many oppressive laws relating to "sex crimes" remain on books. In many states, it is a serious crime for consenting unmarried adults to have sexual relations. Few legislators support such laws, and they are rarely enforced, but few legislators would wish to lead a campaign to remove such laws from the books.

The New York State abortion reform provides an example of what a politically explosive issue can do to a political career. Accordingy to news coverage,

positions by the people in office in the situation that culminated in Westbury v. Sanders.

- Consider the problems of legislative reform of the judicial process in order to reduce legal expenses when more than half of the state legislators also carry on law practices for a livelihood. Legislators may resist no-fault auto insurance because they find auto liability cases profitable.

- Consider the problem of converting a bicameral legislature to a unicameral one as suggested by several candidates in the New York State election of 1972. Fewer legislative positions, less party patronage might result from such a change.

3. Powerful interest groups may assert pressures to discourage change.

   - Consider how and why particular powerful lobbies might discourage change. The National Rifle Association lobby has been active with the advent of proposals for legislation regulating the sale of firearms. Auto and oil industry lobbies have been stimulated by the possibility of pollution control legislation.

Assemblyman Michaels dramatically switched his vote on the New York State abortion bill. The political consequences for following his conscience were severe. Shortly thereafter he failed to get his party's nomination for reelection.

5. Expense and inconvenience. An obvious obstacle to many legal changes is the matter of dollar and time costs. Change is often expensive and inconvenient. Equalizing education through integration, improving the conditions of the environment, or creating more courts could cost hundreds of millions of tax dollars. Many legal changes cannot come unless people are willing to pay for them.

6. Failure to carry out changes that have officially been made. A final obstacle to legal change through the legal system may be the resistance of officials to actual implementation of change once it has officially been made. In some cases, the system may not have the enforcement machinery to enforce a change. The 1960's brought prohibition of much pollution, but the legal system is not yet equipped to enforce compliance with the new requirements.

When significant change comes by court decision, implementation of change is in large part a voluntary matter. The courts have no armies at their dispatch. If other branches of government and the people are not behind the courts, implementation of legal change may be slow. It has been years since the Supreme court ruled that the Constitution calls for integrated schools and that the Constitution forbids prayers in public schools. In many

4. Working for legal change may not be politically very popular.

   - Consider what might be the political consequences to a legislator who works for legislation to legalize and effectively regulate sale and use of marijuana.
   - Consider the case of New York Assemblyman George M. Michaels whose key vote resulted in passage of New York abortion reform (Mr. Michaels did not get his party's nomination for the following November's election. See the New York Times, April 10, 1970.)

5. Making legal changes may be very expensive and inconvenient.

   - Consider the expense and inconvenience in effectively providing for equal public education for black and white children.
   - Consider the expense and inconvenience in combatting air and water pollution.

6. Changes that have officially been made may not in fact be carried out.

   - Consider that although the case of Brown v. Board of Education called for desegration of schools

places, these legal changes still remain changes in theory only.

"with all deliberate speed," a decade and a half later, thousands of schools in the North and South remain in large part segregated.

- Consider that, although the Supreme Court determined that prayers and bible reading in the public schools violates the separation of church and state provisions of the First Amendment (see School District v. Schempp, p. 78), many schools throughout the country continue to open school with religious exercises.

RESOURCES

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See resource section for Understanding IV of Module I for sources of edited versions of this decision.

Wesberry v. Sanders, 376 U.S. Reports 1 (1964) (Legislatures failed to reapportion voting districts until forced to do so by the Supreme Court.)

Edited versions of this decision are contained in: Commager & Henry Steele, ed. Documents in American History, 8th edition, New York: Appleton-Century-Crofts, 1968. Vol. II, Doc. No. 654. pp. 70.-703.

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Tresolini, Rocco J. Constitutional Decisions in American Government. New York, Macmillan, pp. 35-47.

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Brown v. Board of Education, 347 U.S. Reports, 483 (1954)

See resource section for Understanding IV of Module I for sources of edited versions of this decision.

School District v. Schempp, 374 U.S. Reports 298

See resource section for Understanding VI of Module III for sources of edited versions of this case.